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ABSTRACT

This document is designed to provide information to North Carolina administrators and teachers on policy issues related to students with disabilities. Policy letters from the U.S. Office of Special Education Programs and the Office of Civil Rights, as well as "Analysis of Comments and Changes" and "Notice of Interpretations on IEPs" of the Federal Register, are the sources of the questions and answers selected to be included in the document. Questions and answers address the following issues: (1) placement, including screening, evaluation, and identification, placement procedures, the Individualized Education Program (IEP), related services, reevaluation, change in placement, transfer students, and free appropriate public education provisions; (2) procedural safeguards, including prior notice, due process, independent educational evaluations, attorney's feeds, surrogate parents, confidentiality, and destruction of records provisions; (3) discipline, including suspensions, physical restraint, and use of aversive provisions; (4) financial responsibility, including use of funds, residential schools, third-party payments, headcount, and responsibility and liability provisions; (5) general education requirements, including state testing programs and graduation requirements provisions; and (6) preschool children with disabilities, including screening, evaluation and identification, placement procedures, IEPs, related services, reevaluation, free appropriate public education, procedural safeguards, use of funds, and responsibility and liability provisions. (CR)

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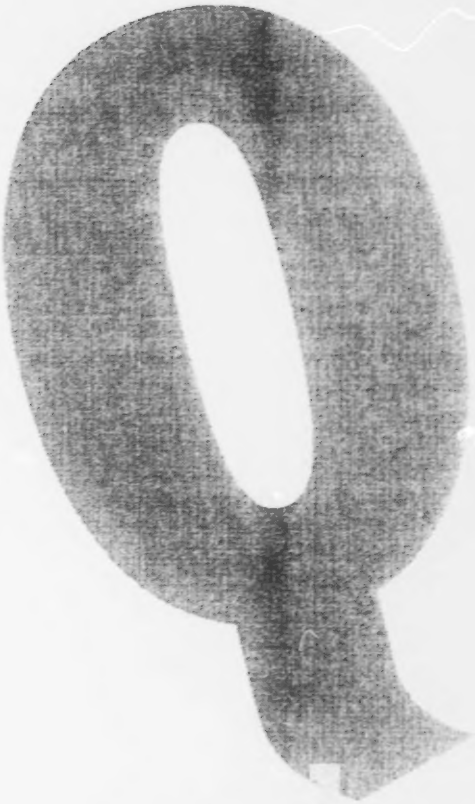

Questions and Answers

Related to Policy Issues about Students with Disabilities

September 1999

ED 437 783

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PREFACE

Over the past several years, many questions have been asked relative to the interpretation of policy concerning exceptional children programs. Questions and Answers Related to Policy Issues about Students with Disabilities represents the efforts of the Exceptional Children Division to compile the responses and organize them in a succinct manner that is convenient and easy to use. Policy letters, as well as *"Analysis of Comments and Changes"* and *"Notice of Interpretations on IEPs"* of the Federal Register, are the sources of the questions and answers selected to be included in the fourth edition of the document. It will be advantageous to review all the questions and answers in this edition since several of the responses are reflective of changing policy interpretations from the Office of Special Education Programs and the Office of Civil Rights, United States Department of Education, as well as the new federal regulations which were published following the reauthorization of the Individuals with Disabilities Act (IDEA).

Directors of Exceptional Children Programs are invited to share this publication with administrators and teachers in any manner that they find beneficial in the administration of programs for students with disabilities. While the answers are not State Board of Education policy per se, they are official interpretations of Procedures Governing Programs and Services for Children with Disabilities, which is State Board of Education policy. Since this document consists of the most recent interpretations, and may include revisions and changes to previously issued policy guidance, it is recommended that earlier editions be destroyed.

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Note: Questions about Preschool Children with Disabilities are numbered/keyed to the numbers for Children with Disabilities. If there are no questions and answers in a particular area, these numbers/keys are omitted.

QUESTIONS AND ANSWERS

1.0 PLACEMENT

1.1 *SCREENING/EVALUATION/IDENTIFICATION*

QUESTION #1

Q. **Must the assistance team supply two new strategies or may it go directly to referral in the following situation? An assistance team recommends interventions for a child, the strategies appear to work, and the assistance team closes the case. Three months later, the teacher brings the same concern to the assistance team. (July 1985)**

A. Two new strategies may not be necessary. The assistance team should try to determine whether the problem might be:

1. a need to modify the strategy;
2. an identifiable change in the employment of the strategy;
3. an identifiable change in the student's life situation; or
4. a need to refer the student.

QUESTION #2

Q. **Occasionally a screening team incorrectly predicts that a child is eligible for EMD placement and refers the child without attempting two interventions. Subsequent evaluation rules out EMD placement but suggests SLD. Must the team now recommend two interventions prior to placement? (July 1999)**

A. The team must determine what information has not been gathered on a student in the pre-referral/screening process and obtain it. If interventions have not been recommended and implemented, the team must return to that point and document the results. The reason for the interventions is to rule out causes for poor educational performance other than a possible disability.

QUESTION #3

Q. **Can documentation of pre-referral screening within the regular educational setting be waived for state-supported residential treatment centers since they have no regular educational settings? (June 1988)**

A. Students referred to state-supported treatment centers from local school administrative units and already identified as BED or LD must meet all criteria. Any information missing may be obtained by phone from the school or gleaned from the student's school records and then documented in the student's folder. A waiver of the items listed below is granted for those students who have not been identified prior to coming to the treatment facility:

1. documentation of at least two interventions in the regular education setting;
2. observation in the regular education setting by an independent observer before referral; and
3. evidence that the student has received supportive regular education assistance.

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QUESTION #4

Q. **If a student from another state enrolls in an LEA, has a current IEP, and meets all of North Carolina's eligibility criteria except for documentation of the required intervention strategies in a regular class, may the intervention requirements be waived? (July 1994)**

A. Yes. If a child with an evaluation identifying him/her as BED or SLD moves into an LEA from another state, the team should convene to determine whether the assessment in the previous state meets the North Carolina requirements. It is not necessary to complete the intervention requirements either at the time of transfer or at reevaluation.

QUESTION #5

Q. **Would observation done during the screening/intervention phase be sufficient for SLD observation during the placement process? (April 1992)**

A. Yes, if the observation requirements of the screening/intervention phase specifically address those characteristics which are associated with learning disabilities and if the person doing the observing is someone other than the student's regular teacher. In addition, the Team may require additional observations if it is necessary.

QUESTION #6

Q. **Can individual testing be completed during the screening/prereferral stage? (July 1999)**

A. Any individual testing for special education purposes requires parental permission and the giving of parental rights prior to individual testing. Since the screening/preferral process is a regular education function, testing completed during that phase does not meet the special education requirements for procedural safeguards. A very real danger is that an individual test could be used to determine eligibility which violates state and federal law requiring team decisions for eligibility for special education. (July 1999)

QUESTION #7

Q. **Is it mandatory to have a copy of the written psychological evaluation report in the student's placement record prior to the time the child is initially placed into a program, or prior to an audit of records in a PCA visit? (July 1999)**

A. Parents must be given a summary of all of the evaluations completed during evaluation. They must also have access to the psychological report. Therefore the report must be placed in the file in a timely manner following completion of the assessment. The report must be available for a PCA visit.

QUESTION #8

Q. **When further testing is thought necessary or when other data appear to be needed, to what extent should the reasons for such recommendations be documented? (July 1999)**

A. The need for further testing and assessment may be documented with written statements of fact or hypotheses that seem unique to that particular student, such as discrepancies between similar types of test scores or between test scores and academic performance; the lack of environmental or cultural opportunities to learn; and the presence of a physical, emotional or learning disability that may render standardized test results suspect. The school system is responsible for determining a format for the inclusion and documentation of these recommendations.

QUESTION #9

Q. Can a student who is functioning at grade level be prohibited from consideration for BED placement? (July 1986)

A. One of the eligibility criteria for placement in a BED program is "evidence that the student's own learning process is consistently and significantly disrupted." It is the team's role to determine and document the information used to show this evidence, but this evidence does not necessarily have to manifest itself in below grade level functioning. However, it is certainly a consideration. IDEA '97 regulations say that children may be suspected of having a disability even if they are advancing from grade to grade.

QUESTION #10

Q. Can a student be identified as behaviorally-emotionally disabled if the presenting behavior is not affecting his educational performance? (July 1999)

A. No. As indicated in the definition of the category behaviorally-emotionally disabled in Section .1501 (A)(2) of Procedures Governing Programs and Services for Children with Disabilities a student so identified must exhibit patterns of situationally inappropriate behavior. The inappropriate behaviors must be long standing patterns of behavior which occur regularly and often enough as to interfere consistently with the student's own learning process.

QUESTION #11

Q. How does the standard error of measure of I.Q. scores apply in the determination of an LD discrepancy? (June 1989)

A. While the use of a standard error of measure may be an appropriate practice psychometrically, it was determined several years ago that the standard error of measure will not be used in North Carolina in the identification of specific learning disabled students. This decision was based on the implications for specific categories and the probability of abuse, such as use of only the upper end and not the lower end of the standard error of measure.

QUESTION #12

Q. Why does North Carolina require a fifteen-point discrepancy between achievement and ability for LD placement when the federal law does not indicate such a discrepancy? (May 1988)

A. Federal regulations require that each state establish criteria for implementing federal law and determining the eligibility of children with special needs. State criteria may exceed federal requirements. North Carolina established the fifteen-point discrepancy for LD after careful study of various intelligence scales, data from the local education agencies who field-tested the criteria, review of other states' procedures, consultation with national experts in the area of learning disabilities, and a review of relevant literature.

QUESTION #13

Q. Can a student with an I.Q. generally considered to be in the mentally disabled range be identified as learning disabled? (July 1999)

A. One of the procedures necessary in identifying a student as learning disabled is ruling out that the disability is not primarily the result of a mental disability. A student who meets the eligibility criteria for educable mentally disabled cannot be identified as LD.

QUESTION #14

Q. Is it permissible for the teacher to do the Vineland adaptive behavior evaluation on a child, or must the parents be interviewed? (July 1999)

A. The Vineland is designed for parental input although there is no regulation which prohibits teachers from answering the items. It is recommended that every effort be made to secure parental responses. This is especially true in light of the increased emphasis in IDEA '97 on parental participation and input.

QUESTION #15

Q. May a student's teacher serve as the informant for an adaptive behavior evaluation, particularly in the case of the AAMD which was normed on teacher responses? (October 1986)

A. Adaptive behavior evaluations are generally designed for parental input as well as others familiar with the student. Although it is not recommended to make it a common practice, teachers may in some instances serve as the informant for the adaptive-behavior evaluation. Every opportunity must be made to involve the child's parents. See Question 14.

QUESTION #16

Q. What is the adaptive behavior cutoff score for EMD placement? (November, 1988)

A. There are no mandatory or rigid cutoff scores for adaptive behavior as there are for cognitive functioning. The LEA should use guidelines in the manual for the instrument it is using. The Vineland Adaptive Behavior Scale describes "adequate functioning" as between -1.0 and +1.0 standard deviations. While two standard deviations below the mean or more is often considered for EMD, the scores do not need to be this low if other documenting data support an EMD level. There should be adaptive behavior deficits for initial placement. If scores rise on a reevaluation, the team might look at whether that rise can be attributed to instruction or unreliable reporting. If all other data supports EMD placement and adaptive behavior scores are slightly above the 2 SD's, the team should be able to justify continued placement.

QUESTION #17

Q. What information should a school have and what precautions should it take with regard to a Down Syndrome child who wants to participate in Special Olympics. (July 1999)

A. Medical research indicates that up to 15% of individuals with Down Syndrome have a mal-alignment of the cervical vertebrae C-1 and C-2 in the neck known as Atlanto-axial instability. This exposes them to possible injury if they participate in activities that hyperextend or radically flex the neck or upper spine. This is of particular concern for those who may be participating in Special Olympics in events such as the butterfly stroke and diving starts in swimming, diving, pentathlon, high jump, squat lifts, equestrian sports, artistic gymnastics, football (soccer), alpine skiing and any warmup exercise placing undue stress on the head and neck.

An athlete with Down syndrome may be permitted to participate in the activities described above if the athlete is examined, including x-ray views of full extension and flexion of the neck by a physician who has been briefed on the nature of the Atlanto-axial instability condition, and who determines, based on the results of that examination, that the athlete does not have an Atlanto-axial instability condition.

If an athlete with Down syndrome is diagnosed with Atlanto-axial instability and wishes to participate in Special Olympics, the school system is advised to contact North Carolina Special Olympics.

QUESTION #18

Q. Must health assessments performed by a nurse be co-signed by a physician? (July 1999)

A. A distinction must be made between what is called "health screening" and a "medical evaluation." Health screening includes but is not limited to vision, hearing and dental screening, review of health history, review of developmental milestones, assessment of physical growth and assessment of nutritional status. Health screening does not have to be performed by a physician. It can be performed by a school nurse, classroom teacher or other professionals the school system chooses to train. A medical evaluation is conducted by a licensed physician to determine a child's medically related disability which results in the child's need for special education and related services. These persons include physicians in all categories of specialty, including psychiatrists when appropriate, optometrists, and health department personnel or physicians' assistants who are authorized to perform certain health evaluations and procedures under the supervision of an M.D.

QUESTION #19

Q. What can be used for an educational evaluation for speech-language impaired children? (July 1999)

A. The Procedures state that an education evaluation is an evaluation of the child's educational functioning in relation to his/her current education program. The results of this evaluation are expressed in terms of both the child's academic strengths and needs. The educational evaluation for a pupil whose only disability is in the area of speech-language could include information from the following: end-of-grade and end-of-course testing; report cards; teacher observations and check lists; and assessment information provided by the parent. If the team decides that it needs information from an individually administered assessment, standardized tests may be given. The purpose for the educational evaluation is to indicate areas of academic strengths and needs.

QUESTION #20

Q. Must a speech screening include all four areas of speech-language impairment (articulation, language, voice and fluency)? (July 1999)

A. Yes. It is through speech screening that the speech-language pathologist knows which area(s) should be assessed through a speech- language evaluation. When the screening reveals that one or more of the four areas are within normal limits, then those area(s) do not need to be evaluated. Only the area(s) in which the student failed requires evaluation. The screening may be done using commercially developed instruments or instruments developed by the speech-language pathologist. The instruments developed by the speech-language pathologists must be in uniform use throughout the local education agency and available for review, if requested, during a PCA. Any instruments used must be appropriate for the population screened and provide information for determining whether or not an evaluation is necessary.

QUESTION #21

Q. What constitutes an educational evaluation for hearing impaired, other health impaired, and orthopedically impaired students? (July 1999)

A. The requirement for an educational evaluation is the same for these areas as other categories. The educational evaluation is an evaluation of a child's educational functioning in relation to his current educational program and must be expressed in terms of both academic strengths and needs. The team may decide that the information needed can be obtained through less formal means such as end-of-grade or end-of-course tests, teacher grades, teacher observation or checklists, or other appropriate diagnostic tests or appropriate formal and/or informal measures. The educational evaluation must be comprehensive enough to provide the necessary information to determine educational strengths and needs.

QUESTION #22

Q. Can a student be classified as orthopedically impaired when the student is served in the regular classroom and receives only physical therapy or occupational therapy? (July 1999)

A. In order for any student to receive a related service, the student must be receiving special education.

QUESTION #23

Q. Can anorexia be considered for other health impaired if the problem requires special educational programming? (April 1987)

A. The condition of anorexia in itself does not qualify a student for special education. If the student, however, has limited strength, vitality or alertness which adversely affects educational performance to such an extent that special educational services are necessary, the student may be identified as other health impaired. Any required screening and evaluation before placement must be documented.

QUESTION #24

Q. Are school systems obligated to serve students who are chemically dependent in programs for exceptional children? (August 1989)

A. House Bill 679, enacted effective July 1, 1989, specifically excludes children with chemical dependency and drug and alcohol addicted children from the designation of children with special needs unless the children meet the criteria for identification in one of the categories of eligibility.

QUESTION #25

Q. When is it appropriate to use a discrepancy alternative to determine eligibility of a learning disabled student? (April 1999)

A. A discrepancy alternative may be used for identification and placement of those students who demonstrate a specific learning disability (LD) but do not meet the 15 or more point discrepancy between aptitude and achievement. This may occur at the time of initial evaluation or re-evaluation when evidence exists that supports a need for special education. Any time an alternative discrepancy is used, there must be compelling documentable justification which includes:

1. the testing procedures used;
2. rationale explaining how the learning disability manifests itself; and
3. why the student needs special education.

The report shall be written by a LD eligibility team; should any member of the team disagree with the decision, a dissenting report must be filed.

QUESTION #26

Q. Which professional, the speech-language pathologist or the learning disabilities teacher, serves the student with a discrepancy between ability and achievement in the areas of oral expression and listening comprehension? (April 1992)

A. The majority of characteristic behaviors for either classification are quite similar in nature and performance (e.g., receptive language problems in perceiving speech sounds, understanding words, understanding language structure, and following directions; or expressive language problems in articulating speech sounds, formulating words and sentences, word finding, language pragmatics). A student with an appropriately diagnosed learning disability in oral expression and/or listening comprehension, and with an appropriately diagnosed language impairment (disorder), may be classified as either a specific learning disabled student or a

speech-language impaired student and served in either category. Whichever classification and service is most appropriate for the student should be the classification and service chosen, keeping in mind that a student cannot have two primary disabilities. Students may not be classified as speech-language impaired unless appropriate diagnostics have been performed by a speech-language pathologist which include an assessment of speech (articulation, voice and fluency) and language (form, content and use). Students may not be classified as LD unless they have been evaluated by a team which includes a person knowledgeable in learning disabilities and demonstrates a significant discrepancy between ability and achievement. A student who is identified in the area of speech-language must receive services from a speech-language pathologist, and a student identified in the area of learning disabilities must receive services from an LD teacher. Services from a speech-language pathologist may be provided if the LD student requires speech as a related service.

QUESTION #27

Q. Are children who have a diagnosis of attention deficit disorder/attention deficit hyperactivity disorder (ADD/ADHD) eligible for special education under IDEA? (July 1999)

A. Children with ADD/ADHD are eligible for special education services under IDEA if they meet the eligibility criteria for one of the existing categories of disabilities, including other health impaired, learning disabilities, or behaviorally/emotionally disabled. An LEA may not refuse to evaluate a child with a medical diagnosis of ADD/ADHD if the child is suspected of having a disability, but a child may not be placed in a category based solely on the basis of a medical diagnosis of ADD/ADHD. A child must be in need of special education in order to qualify under IDEA. IDEA '97 regulations state that a "heightened alertness to environmental stimuli" can result in limited alertness. If a parent requests that a student who has been diagnosed with ADD/ADHD be evaluated for special education and the school has no reason to believe the student is a child with a disability, the LEA has no obligation to evaluate, although it must give the parents prior notice of their due process rights at that time.

QUESTION #28

Q. Procedures requires an educational evaluation prior to initial placement or reevaluation for a visually impaired child. Are there any tests which the Division recommends to use for this purpose? (April 1992)

A. For Braille students, the Stanford Achievement Test, adapted by the American Printing House for the Blind, is suggested. Since this test is normally administered to groups of students, the Summary of Evaluations should state that the Stanford was administered individually. For preschool blind children, the Division suggests such tests as the Oregon Project for Visually Impaired, Blind, and Preschool Children; the Reynell-Zinkin Scales for Young Visually Handicapped Children; the Maxfield-Bucholz Scale of Social Maturity; or the Brigance. For large print readers the use of an enlarged version of the Woodcock-Johnson Psychoeducational Battery-Revised is recommended.

QUESTION #29

Q. How can an LEA satisfy the requirements for a Braille skills inventory which is a component of the placement process in determining eligibility for visually impaired students? (April 1992)

A. The inventory is not a formal test. It is a process of examining factors to determine the individual student's most appropriate or efficient mode of reading--print or Braille. The American Printing House for the Blind offers a pamphlet, "Development of Guidelines for Literacy: Selecting Appropriate Learning Media" by Hilda Caton. A sample assessment developed by A. Koenig of Texas Technical University is also available to assist in making this determination

QUESTION #30

Q. Is a Focus of Concern required when a student's category of eligibility changes from BED to LD, or LD to BED? (April 1992)

A. A Focus of Concern is not required when a student changes from one category to another. However, in order to determine eligibility, the team must:

1. review current diagnostic information;
2. document interventions that have been attempted in regular classes;
3. ensure that all required evaluation components have been completed; and
4. ensure that the student meets the eligibility criteria for either BED or LD and requires special education.

QUESTION #31

Q. What category best meets the needs of a Fragile X syndrome student? (April 1992)

A. There is no one best category for a Fragile X student because Fragile X is the etiology and not the disabling condition itself. The LEA must conduct a multidisciplinary evaluation. If a team decides that the student meets the eligibility criteria in one of the existing categories and is in need of special education, an IEP must be developed based on the strengths and needs identified during the evaluation.

QUESTION #32

Q: Children who have been exposed to cocaine during pregnancy frequently have a unique clustering of neurological problems which may result in a combination of disabilities that appear to require special education although they won't qualify for LD, EMD, BED, etc. Can these students be considered for other health impaired? (July 1992)

A: This question might also pertain to children diagnosed with fetal alcohol syndrome, AIDS or HIV positive as well as cocaine exposure. Each of the above is the etiology of the problem, not the disability. If a student meets the eligibility criteria for other health impaired and the team determines that the student requires special education, the student would qualify for other health impaired. The key factor is that the problem be an acute or chronic health problem that causes limited strength, vitality or alertness to such an extent that special educational services are necessary because the health problem adversely affects educational performance.

QUESTION #33

Q: If a hearing impaired child is identified HI and academically gifted as well and, as a result of special education is making A's in the curriculum, must the child be removed from the HI program because there is no apparent academic deficiency? (July 1999)

A: The Office of Special Education Programs has said on several occasions that the hearing impaired services that allow the child to succeed are in fact the child's special education. If the special education services are removed, the child will fail because of his/her inability to participate in an educational program. The emphasis must be on access to the general curriculum.

QUESTION #1

Q. Who can serve as the LEA representative at the IEP meeting? (July 1999)

A. The "representative of the public agency" could be any member of the school staff who is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the local educational agency. Appendix A (formerly Appendix C, Questions and Answers about IEPs) uses the term "commit resources."

QUESTION #2

Q. Is each school required to have an assistance team? If so, where is that requirement stated in Procedures? (June 1987)

A. There is no requirement in State Board Procedures that every school or school administrative unit must have a school assistance team. It is required that every child who is classified BED or LD after January 1, 1985, must have gone through the pre-referral screening procedures. These procedures are viewed as a regular education function which may be best facilitated by an assistance team or building-based support team.

QUESTION # 3

Q. Does the ninety-day requirement between referral and placement refer only to days that school is in session? (October 1989)

A. The ninety-day requirement refers to calendar days. When a child is referred at the end of the school year for evaluation, the ninety-day requirement applies. The child should be evaluated and a determination made of whether the child meets the criteria for being a child with special needs and whether the child is in need of special education. The determination should be made before the next school year and may not exceed ninety days. When parents fail to make their child available during the summer months or refuse to give consent for evaluation, documentation must be maintained to show a good faith effort on the part of the school to be in compliance with the ninety days. All extenuating circumstances should be documented.

QUESTION #4

Q. If a student with disabilities withdraws from school and later re-enrolls, should he be treated as a new referral or a reevaluation? (October 1987)

A. The student would not be treated as a new referral. If the data are not current, the student should be reevaluated to determine his current educational status and whether or not he remains eligible for special education and related services.

QUESTION #5

Q. Is it appropriate for a local educational agency to have a cut-off date for receiving referrals? (July 1999)

A. This question was first included as a question and answer in 1988. After all of these years, the issue is still brought to the Division's attention from parents and teachers who say their referral was refused because it fell outside of the time frame the school system had established for receiving referrals. It is a violation of federal and state laws to designate specific time frames for receiving or making referrals. Parents, teachers, other professionals, etc. have the right to make a referral at any time they suspect a child is in need of special education. Once the referral is received, the LEA is obligated to begin the process to determine if the child has special needs. Referrals may not be delayed under any circumstances.

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QUESTION #6

Q. How would an LEA handle a situation where the judge refers a child to a specific program and bypasses placement procedures? (April 1985)

A. A judge has the prerogative to commit students to institutions such as training schools. However, the decision regarding placement in the school setting is the responsibility of the IEP team and must be based on identification procedures found in the Procedures.

QUESTION #7

Q. If a student is referred to exceptional children programs for evaluation and is not eligible for services, does the assessment information need to go before the team? (April 1992)

A. Yes. The team must review the assessment information and determine if the student qualifies for placement in an exceptional children's program. The decision regarding placement cannot be made by one person. It must be a team decision, including the parent. The parents can exercise their parental rights if they disagree with the decision.

QUESTION #8

Q. Is there a specific requirement to maintain documentation when the student is not eligible for exceptional children services? (July 1999)

A. Yes. Once a student is referred for an evaluation as an exceptional child, due process rights are in effect immediately whether or not the child is later determined eligible. The parent has the right to ask for further testing, an independent educational evaluation, a due process hearing, etc. Documentation of parent involvement, therefore, remains a safeguard for the LEA and the parent. However, if the parent requests that the information be destroyed, the LEA must comply with the parent's request.

QUESTION #9

Q. Can a parent request that a specific person conduct evaluations done as a part of an initial evaluation or three-year reevaluation? (July 1999)

A. A school system is under no obligation to use a person recommended by a parent or other party. The school system is required to ensure that children receive an appropriate evaluation as specified in Procedures Governing Programs and Services for Children With Disabilities, and that the evaluations be conducted by appropriately certified/licensed professionals. If the parents choose to have an evaluation conducted by a private person of their choosing, it is at their expense, but the team must consider the results in making any decisions.

QUESTION #10

Q. A parent informs an LEA that he/she wants his/her child to be tested immediately for BED or SLD. Is the LEA required to make an immediate referral for testing, or is the LEA required to conduct the pre-referral screening procedures? (April 1992)

A. The LEA can explain the pre-referral process for suspected LD or BED students, stating the purpose and the anticipated length of time it will take to complete pre-referral. However, if the parent insists, the LEA must accept the referral and address assessment immediately. The 90-day timeline begins with the referral. This does not, however, exempt the LEA from its responsibility to assure that the student is eligible for placement following the Division's Procedures. Eligibility criteria for BED and SLD require that specific evidence be documented One of these is "dated and signed documented evidence of at least two interventions attempted

in order to make behavioral and academic achievements possible within the regular educational setting..." Therefore, either simultaneously with the assessment (preferred) or following the assessment, the team must document that classroom interventions have been implemented in the regular classroom. The student must also meet the eligibility criteria for BED and SLD, and require special education. If a parent makes a referral and the LEA does not believe the student has a disability, they must notify the parents of its decision and advise the parent of his/her rights.

QUESTION #11

Q. What is a reasonable time in which to complete the focus of concern? (July 1999)

A. The focus of concern is intended to provide the team with information about a student with a suspected disability; however the process is expected to be completed in a timely manner. It was originally suggested that a minimum of two weeks and a maximum of six weeks was reasonable. OSEP has responded to parents and state agencies on several occasions saying that assistance teams and the functions they perform are not prohibited as long as they are not used to delay the evaluation process.

QUESTION #1

Q. What is required by local education agencies to document that annual reviews have occurred? (April 1992)

A. Annual reviews may be documented in the following manner:

1. An IEP committee convenes to review each child's present goals, short term objectives/benchmarks and progress. Parents must be invited to participate in the meeting.
2. The IEP committee documents the goals attained by each child on the IEP being reviewed and develops a new IEP. Each child's strengths and needs must be summarized.

QUESTION #2

Q. Is adapted physical education considered a related service on the IEP, or is it a separate program? (July 1985)

A. Adapted physical education is not a related service. The term special education includes instruction in physical education. Physical education is defined in IDEA regulations as special physical education, adapted physical education, or regular physical education. Adapted physical education would be treated the same as other instructional areas on the IEP. If the student is enrolled in a regular physical education program and does not require modifications or adaptations, no goals or objectives are required. Participation in general education physical education should be included with the section that addresses participation in regular education.

QUESTION #3

Q. Should activities such as field trips, plays, and interscholastic athletics be written in the IEP? (June 1989)

A. The IEP is not intended to be detailed enough to include instructional plans/activities such as field trips and plays. If the student requires any special equipment, devices, supplemental supports, or transportation in order to participate in these activities, this should be indicated on the IEP.

QUESTION #4

Q. Can a student who qualifies for specific learning disabilities (LD) placement with a fifteen point discrepancy in either mathematics, reading or language be served in a resource class for all three areas? (July 1994)

A. It is not good practice to place LD students in areas in which they do not demonstrate needs which require special education. Although not addressed by regulations, such practices may not serve the best interests of disabled students, and it is questionable as to whether the children could benefit from such services. Documented strengths and needs serve to determine appropriate special education. However, a fifteen (15) point discrepancy is not the only indicator of need. It must be reflected in the documentation that the student has a processing disorder that causes him to manifest difficulties in those areas in which he is receiving special education.

QUESTION #5

Q. Must modifications that are necessary for a child with disabilities to participate in a regular education program be included in the IEP? (July 1999)

A. "Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g.,, for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education." A recent ruling by the Office for Civil Rights (Education of the Handicapped Law Report 16 EHLR 180) further bears this out. It is clear that such modifications do need to be recorded on the IEP. It is helpful to keep in mind that modifications made for regular education instruction must be related to the disability. An LD student with a disability in the area of reading may be able to handle a regular math class if modifications such as having written instructions given orally or having math problems read to him can be provided. It may not be appropriate, however, for that same student to have a modification that allows him to use a calculator to do computations because the student's disability is not related to math computation. Again, the appropriateness of any given modification depends on how it helps a student compensate for an identified area of disability. A final important point is that the appropriate context for making decisions about modifications in the regular classroom is the IEP meeting, where all decisions about the content of an IEP are made. These decisions can be negotiated during the annual IEP review or at a called meeting of the committee. Neither the parents nor the local education agency can make unilateral decisions about such modifications. Disagreements between parents and the local education agency about this issue should be handled like any other similar disagreement, e.g., the parties may agree to follow an interim course of action while the issue is being resolved, or either party may initiate a due process hearing.

QUESTION #6

Q. What are the requirements for Extended School Year-Special Education? (July 1999)

A. Parents must be notified annually that extended school year is available for those students for whom it is appropriate. Federal court cases, rulings of OCR, and policy letters and monitoring reports guide the development of requirements for ESY. Since the extended school year is a part of the IEP, annual review is an appropriate time to determine if the student requires extended school year with documentation of such discussion included in the minutes of the IEP committee meeting. A number of factors must be considered when discussing the need for ESY. These include:

1. degree of impairment;
2. degree of regression;
3. child's rate of progress;
4. behavioral, emotional, and physical problems;
5. availability of alternative resources;
6. vocational needs;
7. need for integration with non-disabled peers;
8. extraordinary needs v. integral needs;
9. need for related services; and
10. cognitive/knowledge skills.

(Refer to the Division ESY position paper, June 1998, for a detailed explanation of ESY.)

QUESTION #7

Q. If a student with disabilities requires a modified school day, must this be written into the IEP? (April 1992)

A. Policy letters and letters of findings from OSERS, OCR and OSEP, and OSEP monitoring reports require a student with disabilities have a school day that is the same length as that of a student without disabilities. If the student requires a modified day, this must be reflected in the IEP, the only vehicle to justify a shortened day. Insufficient numbers of buses, length of transportation routes, etc., are not valid reasons for shortening the school day.

QUESTION #8

Q. If a BED student is enrolled in a self-contained/separate setting because of inappropriate behavior, must the IEP contain goals that address each of the content areas in which the student is receiving instruction? (July 1999)

A. The IEP contains goals and short term instructional objectives/benchmarks which define the special education that the student is receiving. If content areas do not require special education they are not addressed. However, if a modification or other special education is being provided in the content area, that would be noted. The definition of behaviorally-emotionally disabled requires that there be behavioral and/or emotional problems to the extent they impact adversely and interfere consistently with the student's own learning process. An IEP for a BED student will always contain at least one behavioral goal and objectives, and may contain academic goals and objectives. The IEP must state the extent to which the student will not participate in the general curriculum.

QUESTION #9

Q. What are the major requirements that govern the involvement and progress of children with disabilities in the general curriculum? (July 1999)

A. The IEP must contain a statement of the student's present levels of educational performance which includes how the student's disability affects his/her involvement and progress in the general curriculum. How the student will be involved and progress in the general curriculum is a primary component that must be considered in developing an IEP. There are a variety of assessment techniques that can be used to help determine the present level of performance.

The IEP must contain measurable annual goals, including benchmarks or short-term objectives. The annual goal describes what a student with a disability can reasonably be expected to accomplish within a year.

The purpose of benchmarks and short-term objectives is to allow teachers, parents, and others involved with the education of the student to measure progress toward attaining the annual goal(s) at various points throughout the school year. The short-term objectives generally break the skills described in the annual goal into discrete components. The benchmarks can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks set expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of the student's progress toward achieving the annual goal(s). The IEP team may use either benchmarks or short-term objectives, or a combination of both.

In addition to the above, the IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student. These must be designed to allow the student:

1. to advance appropriately toward attaining the annual goals;
2. to be involved and progress in the general curriculum; and

3. to be educated and participate with other students with disabilities and nondisabled students in extracurricular and other nonacademic activities.

In satisfying the requirement for the student with a disability to be educated with nondisabled students to the maximum extent appropriate, the IEP must contain an explanation of the extent, if any, to which the child will not participate with nondisabled students in the regular class and in extracurricular and nonacademic activities.

There is an expectation that students with disabilities will participate in state-wide assessment programs, and that they will be provided with appropriate accommodations. The participation and accommodations must be included in the IEP. If a student with a disability cannot participate in the assessment program even with modifications, the IEP must include a statement as to why the student cannot participate and how the student will be assessed.

IDEA '97 added a requirement that a regular teacher be a member of the IEP team because of the increased emphasis on the general curriculum and the disabled student's involvement in it. While the regulations use the phrase, "if the child is, or may be, participating in the regular curriculum," it is anticipated that there will be few cases when consideration will not be given to whether a student with a disability will participate in the general curriculum. (See Question 5)

QUESTION #10

Q. Must a child's IEP address his/her involvement in the general curriculum, regardless of the nature and severity of the disability and the setting in which the child is educated? (July 1999)

A. Yes. The IEP for each student with a disability (including students who are educated in separate classrooms or schools) must address how the student will be involved and progress in the general curriculum. However, since the student may have other needs resulting from the disability, the IEP team must make an individualized decision regarding:

1. how the student will be involved and progress in the general curriculum and what needs result from the disability that also must be met;
2. whether the student has any other educational needs resulting from his or her disability that also must be met; and
3. what special education and other services and supports the student needs.

QUESTION #11

Q. Must the measurable annual goals address all areas of the general curriculum, or only those areas in which the student's involvement and progress are affected by the student's disability? (July 1999)

A. The IEP Team is required to develop annual goals addressing the skill/curriculum/behavior/domain area(s) resulting from the student's disability and needing specialized instruction in order to be involved in and progress in the general curriculum.

In addition, modifications and accommodations are available to students with disabilities across content areas, within the general curriculum, if they are necessary for the student to access and progress in the general curriculum. These accommodations and modifications must be specified in the IEP.

QUESTION #12

Q. What is the role of the parents or surrogate in decisions regarding the educational placement of the student? (July 1999)

A. IDEA '97 strengthens the role of the parents in the education of students with disabilities.

Parents must have the opportunity to participate in decisions about data that are needed as part of the evaluation of their students, eligibility, and educational placement. Concerns and information provided by the parents must be considered by the team making decisions. With regard to the IEP, parents are expected to be equal participants along with school personnel in developing, revising, and reviewing an IEP. This is an active role in which parents:

1. provide critical information regarding the strengths of the student and express their concerns for enhancing the education of their child;
2. participate in discussions about the student's need for special education and related services and supplementary aids and services; and
3. join with the other participants in deciding how the student will be involved and progress in the general curriculum and participate in state assessments, and what services the agency will provide to the student and in what setting.

They must also be informed of the student's progress toward meeting the goals of the IEP and to what extent that progress is sufficient to enable the student to achieve the goals by the end of the year at least as often as parents of nondisabled students are informed.

QUESTION #13

Q. What are the requirements for a student to participate in the development of the IEP? (July 1999)

A. A student with a disability must be involved in the IEP meeting any time transition is a topic or any other time that is appropriate. If transition is not involved, the school should, if possible, discuss the appropriateness of the student's attendance with the parents. Two factors to consider are whether the student will be helpful in developing the IEP or if participation will be beneficial to the student.

QUESTION #14

Q. Must the school system inform the parents who will be at the IEP meeting? (July 1999)

A. Yes. The school must notify the parents and the notice must include the purpose, time, location of the meeting, and who will be in attendance. If consideration of transition as a component of the IEP is to be discussed, the parents must be notified that the student will be invited and identify any other agency that will be invited to send a representative.

It may be appropriate for the school to ask the parents if they are planning to bring someone, and parents are encouraged to notify the school of the names of those they intend to bring. However, the parents are not required by law to do so.

QUESTION #15

Q. Do parents have the right to a copy of the IEP? (July 1999)

A. Yes, without cost.

QUESTION #16

Q. What is the LEAs' responsibility if it is not possible to reach consensus on what services should be included in a student's IEP? (July 1999)

A. The IEP meeting is a vehicle for communication between the parents and the school, and enables them to make joint, informed decisions regarding the student's needs, goals, involvement in the general curriculum, and services needed to support the involvement and participation. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information they

provide regarding the student. Although the IEP team should work toward consensus, the school has the ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the school system must provide the parents with prior written notice of the system's proposals or refusals, or both, regarding the student's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

QUESTION #17

Q. Is the LEA required to inform parents about the educational progress of their students? (July 1999)

A. The school is required to inform parents about their students' educational progress toward achieving the annual goals at least as often as parents of nondisabled students are informed.

QUESTION #18

Q. What are the LEA responsibilities regarding transition on the student's IEP? (July 1999)

A. The IEP team, beginning at age 14, must determine what instruction and educational experiences will assist the student to prepare for transition from secondary education to post-secondary life. The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals.

Although the focus of the transition planning process may shift as the student approaches graduation, the IEP team must discuss specific areas beginning at least at the age of 14 years, and review these areas annually.

To help reduce the number of students with disabilities that drop out, it is important that the IEP team work with each student and the student's family to select courses of study that will be meaningful to the student's future and motivate the student to complete his or her education.

Beginning at age 16, the IEP must include a "coordinated set of activities, that:

1. is designed within an outcome-oriented process, that promotes movement from school to post-school activities. The process includes postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation;
2. is based on the student's needs, taking into account his/her preferences; and
3. includes:
    a. instruction;
    b. related services;
    c. community experiences;
    d. development of employment and other postschool adult living objectives; and
    e. if appropriate, acquisition of daily living skills and functional vocational evaluation.

IDEA '97 eliminated the need to include a statement that explains why certain of the components listed above are not included in the IEP.

QUESTION #19

Q. Must the IEP include transition services that are being provided by another agency? (July 1999)

A. Yes. If the services that are to be provided by another agency are not delivered by that agency,

the LEA is responsible for implementing alternative strategies to meet the student's needs.

QUESTION #20

Q. When a student is receiving special education for the first time, when must the IEP be developed – before or after placement? (July 1992)

A. The IEP must be in effect before special education and related services are provided to a student with a disability. It is not permissible to first place the student and then develop the IEP.

QUESTION #21

Q. Who is responsible for ensuring the development of IEPs for children with disabilities served by a public agency other than an LEA? (July 1999)

A. The LEA who is responsible for the education of the student is ultimately responsible for the development and implementation of the IEP whether the student is in a public or private school setting.

QUESTION #22

Q. Who is responsible for ensuring the development of an IEP for a student who is placed out-of- state by the LEA? (July 1999)

A. The LEA who placed the student in an out-of-state facility is responsible for the development and review of the IEP.

QUESTION #23

Q. If a student with an IEP transfers from one LEA to another in the same state, must the new LEA develop an IEP before the student can be placed in a special education program? (July 1999)

A. The receiving LEA is responsible for ensuring that FAPE is made available to the student. An IEP must be in place before the student receives special education and related services. The LEA. can meet this responsibility by either adopting the IEP the former school district had developed or develop a new IEP for the student. If the student's current IEP is not available, or if the parent believes that it is not appropriate, the new LEA must develop a new IEP through appropriate procedures within a short time after the student enrolls in the new school (normally within one week).

QUESTION #24

Q. What timelines apply to the development of an initial IEP? (July 1999)

A. An IEP meeting must be held within 30 days of the determination of eligibility to develop an IEP and the implementation must begin as soon as possible. In North Carolina there is a ninety day timeline from referral to placement. This timeline encompasses the 30 day requirement.

QUESTION #25

Q. Must an LEA hold separate meetings to determine a student's eligibility for special education and related services, develop the child's IEP, and determine the student's placement, or may the LEA meet all of these requirements in a single meeting? (July 1999)

A. If all of the appropriate persons are present, it is permissible to conduct a single meeting to

carry out all of the requirements listed above. It is also permissible to conduct separate meetings.

QUESTION #26

Q. How frequently must a public agency conduct meetings to review, and if appropriate revise, the IEP for each child with a disability? (July 1999)

A. A review must be conducted periodically, but at least once every twelve months. The review is for the purpose of determining whether the annual goals are being achieved, and to revise the IEP, as appropriate, to address:

1. any lack of expected progress toward the annual goals and in the general curriculum;
2. the results of any reevaluation;
3. information about the child provided to, or by, the parents;
4. the student's anticipated needs; or
5. other matters.

The student's parents or teacher(s) may request an IEP meeting at any time.

An IEP must be in effect at the beginning of each school year. The school may conduct an IEP meeting at any time during year. However, if the IEP meeting is held prior to the beginning of the school year, the school must ensure that the student's IEP can be appropriately implemented during the next school year; otherwise, a new IEP meeting must be held before school begins.

Any time the LEA refuses to conduct an IEP meeting at a parent's request, it must provide the parent with prior written notice of the refusal including an explanation of why the LEA has determined that conducting the meeting is not necessary to ensure FAPE.

QUESTION #26

Q. May IEP meetings be audio or video-tape recorded? (July 1999)

A. IDEA '97 does not speak to either audio or video taping of IEP meetings. The Exceptional Children Division does not have a policy regarding this topic.

QUESTION #27

Q. Who can serve as the representative of the LEA at the IEP meeting? (July 1999)

A. The LEA representative must be someone who:

1. is qualified to provide or supervise the provision of specially designed instruction;
2. is knowledgeable about the general curriculum; and
3. is knowledgeable about the availability of resources of the LEA.

Each LEA may designate which specific staff member will serve as the LEA representative in a particular IEP meeting so long as the individual meets these requirements. However, it is important that the person has the authority to commit LEA resources and be able to ensure that whatever services are set out in the IEP will actually be provided. The LEA representative may be another member of the IEP team as long as the person has these three qualifications.

QUESTION #28

Q. Which teacher(s) should attend the IEP meeting for a student with a disability being considered for initial placement? (July 1999)

A. A group of qualified professionals and the parent of the child must determine whether the child is a child with a disability. In addition to other required team members, the required teachers on this team include:

a. the child's regular teacher. If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; and
b. at least one special education teacher of the child, or if appropriate at least one

special education provider of the child if the service consists of specially designed instruction and is considered special education by the state. In North Carolina, this applies to the speech language pathologist.

QUESTION #29

Q. **What is the role of the regular education teacher in the development, review, and revision of the IEP for a student who is, or may be, participating in the regular education environment? (July 1999)**

A. The regular education teacher must be involved in the development, review, and revision of the student's IEP. This includes assisting in determining appropriate positive behavioral interventions and strategies, and determining supplementary aids and services, program modifications, and supports for school personnel that will be provided for the child. In particular the regular education teacher must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the student's involvement and progress in the general curriculum and participation in the regular education environment.

QUESTION #30

Q. **If a student with a disability attends several regular classes, must all of the regular education teachers be a member of the IEP team? (July 1999)**

A. No. The IEP team does not need to include more than one of the student's regular education teachers. However, this doesn't preclude inviting more than one if that is advisable.

QUESTION #31

Q. **How should the LEA decide which teachers, regular and special, will attend the IEP meeting? (July 1999)**

A. The regular education and special education teachers should be those individuals who are responsible, partly responsible, or who may be responsible for implementing part of the IEP. The IEP Team should be encouraged to seek input from any of the student's teachers who will not be attending the meeting.

QUESTION #32

Q. **For a student whose primary disability is a speech impairment, can the LEA meet its requirement to ensure that the IEP team includes "at least one special education teacher, or if appropriate, at least one special education provider of the child," by including a speech-language pathologist on the IEP team? (July 1999)**

A. The IEP team should include the speech language pathologist. A regular education teacher should also be included.

QUESTION #33

Q. **What options do the parents and the LEA have in inviting individuals of their choice to the IEP meeting? (July 1999)**

A. Either party has the option to invite other persons to attend the IEP meeting if those persons have **knowledge or expertise regarding the student.** This is a change from the 1990 reauthorization of IDEA which allowed the parents or the school system to invite anyone at their discretion. The party inviting the individual is the one who determines expertise or knowledge.

QUESTION #34

Q. Can parents or LEAs bring attorneys to IEP meetings and are attorneys' fees available for attending an IEP meeting? (July 1999)

A. If the attorney has knowledge or expertise about the student, he/she could be invited. The presence of either the parents' or the school system's attorney may contribute to a potentially adversarial atmosphere. Therefore, the attendance of attorneys at IEP meetings should be discouraged. (See Question 25)

Attorneys' fees are not available for attendance at an IEP meeting unless the meeting is ordered as a result of an administrative procedure.

QUESTION #35

Q. Must related services personnel attend IEP meetings? (July 1999)

A. Related services personnel do not have to attend IEP meetings, although is desirable if related services are to be discussed as a component of the IEP. If the related service provider is unable to attend, he/she should provide a written recommendation concerning the nature, frequency, and amount of service to be provided to the student.

QUESTION #36

Q. Must the LEA ensure all services specified in the IEP are provided? (July 1999)

A. Yes. The school system may provide the services directly through its own staff resources, indirectly, by contracting with another public or private agency, or through other arrangements. The school system may use whatever state, local, federal, and private sources of support are available, but the services must be at no cost to the parent.

QUESTION #37

Q. Is it permissible for the LEA to have the IEP completed before the meeting begins? (July 1999)

A. No. The school may bring evaluation findings and proposed recommendations regarding IEP content, but the school must make it clear to the parents at the outset of the meeting that the services proposed by the school are only recommendations for review and discussion with the parents. The parents have the right to bring questions, concerns and recommendations to an IEP meeting as part of a full discussion. If a draft of some or all of the IEP components is brought to the IEP meeting, there must be full discussion before the final IEP is written.

QUESTION #38

Q. Are related services limited to those listed in the definition of related services? (July 1999)

A. No. The list of related services is not all inclusive. The need for a particular service which might be a related service must be discussed on an individual basis.

QUESTION #39

Q. **Are there any circumstances under which it is permissible for a student who requires school purchased assistive technology to use the equipment in the home or another setting? (July 1999)**

A. The school must permit a student to use school purchased assistive technology at home or in other settings, if the student requires it in order to receive FAPE, i.e. homework, etc. Assistive technology devices that are necessary to ensure FAPE must be provided at no cost to the parents, and the parents may not be charged for normal wear and tear.

QUESTION #40

Q. **Does the IEP have to specify the amount of services or may it simply list the services to be provided? (July 1999)**

A. The amount of services provided to a student must be specified on the IEP so that the level of commitment of resources is clear to everyone involved. For the first time, the regulations speak to the possible use of a range of services, but it is very limited. The example the regulations use is the case of a seizure disordered student who has seizures on an irregular basis and requires services only at that time. Ranges may not be used because of personnel shortages or uncertainty regarding the availability of staff.

QUESTION #41

Q. **Can the IEP team also function as the group making the placement decision for a student with a disability? (July 1999)**

A. The school may use the IEP team to make placement decisions if the team is comprised of a group of persons, including the parents, and other persons as appropriate who are knowledgeable about the child, the meaning of the evaluation data, and the placement options.

QUESTION #42

Q. **If a student's behavior in the regular education setting, even with appropriate interventions, would significantly impair the learning of others, can the team that makes the placement decision determine that placement in the regular classroom is inappropriate for that child? (July 1999)**

A. If a student's behavior is interfering with the education of others, careful consideration must be given to whether the student can appropriately function in the regular classroom if provided appropriate behavioral supports, strategies and interventions. If the student's behavior in the regular classroom, even with the provision of appropriate behavioral supports, etc., significantly interferes with the learning of other students, placement in the regular classroom is not appropriate to meet the student's needs and would not be appropriate for that student.

QUESTION #43

Q: **How can the LEA document that all staff have been advised of their specific responsibilities to carry out requirements of the IEP? (July 1999)**

A: The legally defensible method is to provide any staff member who has responsibilities for the IEP with a copy of the IEP.

NOTE: For more in-depth answers to IEP questions, please refer to Appendix A, Part 300, Federal Regulations, March 12, 1999.

QUESTION #1

Q. Is there a regulation which absolutely prohibits an LEA from having a separate facility for students with disabilities? (July 1999)

A. The Office of Civil Rights has no regulations which prohibit a local education agency from having or building a separate facility. Under Section 504 (Rehabilitation Act of 1973), students with disabilities must be given the opportunity to participate in regular education and/or in activities with regular students. A local education agency would have to document strong justification for placing any student in a separate facility.

The Office of Special Education Programs also has no rule or law that prohibits a separate facility; however, they also state that a local education agency has to document that options for less restrictive placement have been considered and the option chosen was based on each child's needs rather than the availability of the special facility. Placement decisions must not be based on category of disability, configuration of the service delivery system, availability of personnel/space, curriculum content or methods of delivery, or parent choice. Justification is needed that each individual student in the separate facility can not be educated closer to the regular classroom and the child's home school, and that a process is in place for making each decision.

At the time of annual review, all of the placement options must be considered and there must be a serious effort to place the student in a less restrictive environment.

QUESTION #2

Q. Does the LEA have the right to assign a student with disabilities to a school in the school system other than the student's neighborhood school? (January 1989)

A. Yes. The LEA may transfer a child with disabilities under the same administrative procedures as it would transfer students in regular education. A change in location that does not fundamentally change or eliminate any of the elements on the child's IEP is considered reasonable and adheres to IDEA. If a parent disagrees with the local education agency's conclusion that the change in location does not entail a change in the child's educational program, the parent has due process procedures available. Notification to the parents of students involved in any transfer is advisable in order to promote positive relationships between the school and the parents.

QUESTION #3

Q. If a child is mainstreamed for all nonacademic activities such as physical education, music and art, does that placement include participation in field trips and a grade level play? (June 1989)

A. According to IDEA '97 and Section 504, children with disabilities must be afforded an equal opportunity for participation in nonacademic and extracurricular activities. If, for example, a field trip is offered in a class in which a child with disabilities participates, the child with disabilities should be afforded the same opportunity to attend the field trip under the same conditions as the students without disabilities. If a child with disabilities participates in a class in which a play is to be presented, he/she should be afforded the same opportunity to audition for a part as students without disabilities.

QUESTION #4

Q. **Can a student who is identified as learning disabled in oral expression and/or listening comprehension be placed in an LD resource program or a developmental kindergarten program for exceptional children in addition to receiving services from the speech/language specialist? (October 1986)**

A. The student may receive academic instruction in the LD program since LD is his primary disability. He may also receive speech-language as a related service if he has been determined through evaluation and eligibility criteria to possess a speech-language impairment for which a related service is needed.

QUESTION #5

Q. **Is regular class placement an appropriate option for OHI students? (August 1994)**

A. The regular class with instructional modifications is an appropriate option for services to other health impaired students who are appropriately identified. The student's IEP must justify services by describing the needs of the student and the modifications and special instruction which constitute special education. According to state and federal law, the regular class is always the most appropriate placement for any student with disabilities unless it has been determined that he/she cannot function satisfactorily in the regular classroom with the use of supplementary aids and services.

QUESTION #6

Q: **Can a student identified as mentally disabled be placed and served in a classroom with students with learning disabilities? (July 1999)**

A: Yes. A student with mental disabilities can be served in a classroom with students with learning disabilities if the IEP team decides that setting is the educationally appropriate and least restrictive environment for that individual student. Generally, teachers who teach these classrooms have licensure in learning disabilties and mental retardation or cross-categorical certification in mild disabilities.

1.5 *RELATED SERVICES*

QUESTION # 1

Q. Are physical therapy and occupational therapy related services or special education services? If these areas are related services only, is a child eligible to receive physical therapy and/or occupational therapy if he does not qualify for special education services? (July 1999)

A. Physical therapy and occupational therapy are related services that may be provided for students with disabilities has in order to benefit from special education. If a student does not require special education, he/she is not eligible to receive related services.

QUESTION # 2

Q. Is psychological counseling a related service? (April 1992)

A. Related services are limited to support services which are required to assist a student to benefit from special education. The key factor is that the student must need the service to support or benefit from the special education he is receiving. Psychological services are included as a related service when they meet the definition of one. Psychological services include the following:

1. administering psychological and educational tests, and other assessment results;
2. interpreting assessment results;
3. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
5. planning and managing a program of psychological services including psychological counseling for children and parents;
6. referring children and families to community agencies and services when appropriate;
7. screening and early identification of children with special needs; and
8. developing strategies for the prevention of learning and behavior problems.

The definitions above do not mean that a school system is obligated to pay for private psychological counseling. The school system must plan for and arrange for any psychological counseling that the IEP committee determines that the student needs. Such counseling may be provided at school or a referral can be made to other community agencies.

QUESTION #3

Q. Can a child classified as speech and/or language impaired receive occupational therapy as a related service? (July 1999)

A. Yes, if the OT is required in order for the student to benefit from the speech-language special education. The OT component of the IEP and intervention goals must relate to the student's disability, in this case speech and/or language.

QUESTION #4

Q. When is audiology considered a related service which must be included in the annual goals and objectives of the IEP? (August 1994)

A. A key question to ask to determine whether a service is related or not is, What is the child learning? If the audiologist is providing assessment type functions or checking the child's hearing aids, this is not a related service. However, if the audiologist is assisting the child to learn something that will help him/her to benefit from his special education, then that is a related service and requires a goal(s) and objectives on the IEP. Some examples of this type of activity might be teaching a student to lip read, teaching the child to check and maintain his/her own hearing aid, or providing counseling and guidance to pupils, parents, and teachers.

QUESTION #1

Q. What is reevaluation? (July 1999)

A. Reevaluation is a **process** that is conducted in order to determine the continuing eligibility of a student with a disability or to develop an IEP. Reevaluation is required any time conditions warrant, or the student's parent or teacher requests a reevaluation, but at least once every three years. Process is the generic term for the deliberations that an IEP team goes through in deciding whether a student continues to be eligible for special education and related services. The team examines existing data, including information provided by the parents, and determines if additional assessment is required in order to reach a decision. If additional assessment is required, the parent must be given prior written notice and must give written permission to conduct the assessment(s). The authors of the law and regulations saw this new procedure as a way to reduce unnecessary testing and to concentrate on gathering information that would address the educational needs of the student. If no additional testing is required, it is not necessary to obtain written parental consent.

QUESTION #2

Q. Must the team meet as a whole when reviewing the existing information? (July 1999)

A. No. Team members may individually review all information. However, once the information has been reviewed by the team members, the team must meet as a committee to make its decisions regarding continuing eligibility or exit from the program.

QUESTION #3

Q. What types of information should be reviewed prior to making a decision about additional assessments? (July 1999)

A. Existing evaluation data can consist of evaluations and information provided by the parents, current classroom-based assessments and observations, observations by teachers and related service providers, results of state-wide assessments, etc.

QUESTION #4

Q. What must occur when it is decided that a related service may be needed for a student with a disability? (July 1999)

A. In order for a student with a disability to receive a related service, it must be required in order for the student to benefit from special education. Therefore, the need for a related service cannot be determined in isolation. A team would have to review the student's IEP and other information and decide if, in fact, it seems feasible that the student may require a related service. Parental permission would have to be obtained before testing.

QUESTION #5

Q. Is it permissible for an LEA to establish its own procedures that require specific tests at the time of reevaluation? (July 1999)

A. No. The whole purpose of the new process is to allow flexibility within a team framework and to focus reevaluation efforts on the educational needs of the student.

QUESTION #6

Q. **At the time of reevaluation, if the team decides the student no longer qualifies for a particular disability or does not qualify for any special education at all, must the team reports be completed? (July 1999)**

A. All team reports and prior written notice must be completed. This constitutes a change of placement and all procedural safeguards must be in place. In the case of specific team reports, i.e., LD Report, the report indicates non-eligibility as well as eligibility.

QUESTION #7

Q. **If the team decides that a new aptitude test is not required when considering reevaluation of a LD student, can the old aptitude test be used with a new educational test to figure a discrepancy? (July 1999)**

A. The age norms for the two tests would not be compatible; therefore a new discrepancy could not be figured using the two. Perhaps there is other information that would document a continuing learning disability, and the new educational test would be used for development and implementation of the IEP.

QUESTION #8

Q. **Do high school students have to be reevaluated prior to graduating? (July 1999)**

A. High school students with a disability who are graduating with a standard diploma do not require a reevaluation. However, since graduation is a change of placement, prior written notice must be given to the parents.

QUESTION #9

Q. **What happens when the team determines that no additional assessments are required for reevaluation, but the parent requests a reevaluation that includes testing? (July 1999)**

A. If a parent requests additional testing after receiving the prior written notice informing him/her of the decision of the team, the school system must complete a reevaluation that includes testing.

QUESTION #10

Q. **What can a school system do if the parent refuses to give written consent for testing during reevaluation? (July 1999)**

A. The school system can offer mediation to see if that will resolve the impasse. The ultimate recourse however is due process. If the school system has knowledge that the student requires special education, it has an obligation to go to due process and request that an administrative law judge grant it permission to proceed with testing.

QUESTION #11

Q. **What can a school system do if the parent does not acknowledge its request for written consent for testing? (July 1999)**

A. Parental consent is required for an initial evaluation or for evaluations as a part of the reevaluation process. If the district is seeking to conduct an initial evaluation and the parent refuses consent, the district may pursue due process procedures. If the testing is for a reevaluation, and the school system can document a good faith effort that it tried to obtain the parent's written consent, it can proceed with testing.

A good faith effort must include an invitation to conference reflecting the district's attempt to arrange a mutually agreed on time and place as well as:

1. detailed records of telephone calls made or attempted and the results of those calls;
2. copies of correspondence sent to the parents and any responses received; and
3. detailed records of visits made to the parent's home or place of employment and the result of those visits.

QUESTION #1

Q. What constitutes a change in educational placement and when are parents entitled to prior notice? (April 1992)

A. Educational placement is where the student receives special education and related services -- the continuum as it relates to least restrictive environment. A change in educational placement occurs when the placement required in the a child's individualized education program is affected or changed. Parents must be notified a reasonable time before the public agency:

1. proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or
2. refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.

This notice is called "prior written notice."

QUESTION #2

Q. What is meant by the term "end of the grading period?" (July 1985)

A. Local board policy will determine the grading period for the schools within its system (six weeks, nine weeks, etc.) For students with disabilities, progress toward the annual goal must be reported as often as general education students' progress, which may include progress reports in addition to report card periods.

QUESTION #3

Q. Is reevaluation required for exiting a student from a special education program? (July 1999)

A. Reevaluation is required to exit a student from a special education program except for an exit due to graduation with a regular diploma or an exit due to exceeding the age of eligibility for FAPE under state law. The reevaluation may or may not require new testing; however, there must be current information to substantiate the exit when the IEP Team which determines continuing eligibility makes a recommendation for a change in placement. Parents must be given prior notice of the exit decision at least ten days prior to the exit. The parents have the right to contest the exit through due process, in which case the stay-put provision is in effect until such time as the disagreement is resolved.

School exit by means of a standard diploma or by reaching maximum age constitutes a change in placement and requires prior notice. A student who receives a certificate of achievement or a graduation certificate is not considered to have exited the program and is entitled to return to school until he/she reaches the 21st birthday.

1.8 Out-of-District Placements, Community Residential Centers, Developmental Day Centers

QUESTION #1

Q. What are the responsibilities of a local education agency when it places children with disabilities in another local education agency? (August 1989)

A. Local education agencies may, when unable to provide an appropriate education, place children with disabilities in another local education agency with the following procedures:

1. A local education agency may contract with another local education agency for a special education program. The contract is for one year and renewable annually. The local education agency of legal residence is responsible for due process rights and ensuring the implementation of the IEP. The agency of legal residence of the child should include the child in the December 1 and April 1 headcounts. The receiving unit will include the child in ADM, thereby generating ADM funds or teaching positions. The sending LEA is responsible for record compliance and should maintain a copy of the IEP and the annual review. It is recommended that the sending unit develop the initial IEP in cooperation with the receiving LEA and that both units participate in the annual review.
2. A local board of education may release, by board action, a child to another local board of education. The receiving board must, by board action, accept the child. This process is for one year but could be renewed annually. The receiving LEA would be responsible for all due process rights, implementing the IEP, record compliance, and counting the child in all headcounts. The receiving LEA would be the defendant in any due process hearing brought by the parent.

QUESTION #2

Q. May Developmental Day funds be spent in local education agencies for preschool and/or school age children with disabilities? (August 1994)

A. Developmental Day funds can only be used in an approved developmental day center. These funds are used by an LEA for contracting for educational and related services in a developmental day center.

QUESTION #3

Q. How does an LEA place a child in a developmental day center? (July 1999)

A. Preschool and school-age students with disabilities are placed by the local education agency through its IEP team. All services received should be negotiated locally and included in the contract between the LEA and developmental day center. The service delivery model for each child is determined by the IEP team and the IEP is based on each child's individual needs. The procedure for placement is the same for preschool children and school-age students.

QUESTION #4

Q. Can a developmental day center request that an LEA place a specific number of children in order to utilize the available slots? (August 1994)

A. No. All placement of children is the responsibility of the local education agency. Placement of children in a developmental day center must be based on the individual needs of each child. All placement options must be considered in meeting the requirement of the least restrictive environment.

QUESTION #5

Q: Is it possible for a child to be served in a developmental day center as a preschooler and continue services in the same center after he/she becomes eligible for kindergarten? (July 1994)

A. Yes. A child may continue to be served in that same developmental day center if the IEP team determines that the placement continues to be an appropriate educational placement. The IEP committee must consider all factors related to LRE, as well as opportunities for interaction with age-appropriate peers.

QUESTION #6

Q. Are teachers of preschool children with disabilities that are located in developmental day centers required to have preschool licensure? (August 1994)

A. Yes. Teachers who are providing special education to children placed by LEA's must hold preschool add-on licensure, birth-kindergarten licensure, or provisional birth-kindergarten licensure.

QUESTION #7

Q. Can an LEA contract with any developmental day center? (August 1994)

A. LEA's may only purchase developmental day services in centers operated by area mental health authorities, private nonprofit agencies, or other public agencies. An approved list is on file in the Exceptional Children Division.

QUESTION #8

Q. What is the process for placing a child in a community residential center when the placement is for residential reasons? (August 1994)

A. As of August 15, 1994, all children placed in community residential centers for residential purposes must be placed through the Area Mental Health Authority, the single portal of entry. The Interagency Council must be involved. Parents may not place children in community residential centers with the expectation that the state will pay for this placement. This procedure was developed to comply with legislation enacted by the 1993 session of the General Assembly which requires a single portal of entry for placement in community residential placements.

QUESTION #1

Q. When a child with a disability moves from one LEA to another LEA what must the receiving LEA do about the provision of special education for the child? (February 1990)

A. A transfer does not justify interrupting special education whether the transfer is in-state or out-of-state. The receiving LEA is expected to implement the IEP so as to ensure there is no disruption to the delivery of special education and related services. If a child with a disability moves to a new district, and the parents and the new district are unable to agree on an interim placement, the new district must implement the old IEP to the extent possible until a new IEP is developed and implemented. To the extent that implementation of the old IEP is impossible, the new district must provide services that approximate, as closely as possible, those called for in the old IEP. If a review of the student record reveals that there is insufficient evaluation information to substantiate the student's placement in a special education program, the receiving LEA must proceed with a new evaluation as quickly as possible to confirm eligibility and the requirement for special education.

QUESTION #1

Q. Are there any circumstances under which the school day for a student with disabilities can be shorter than that of students without disabilities? (August 1994)

A. There is only one situation when that may occur, and that is if the present level of performance and the correlating annual goal(s) and short term instructional objectives or benchmarks indicate that a particular student with a disability requires a modified school day. Other than that, the school day for children with disabilities must be commensurate with that of students without disabilities. Transportation or administrative convenience is never an acceptable excuse for a shortened day.

2.0 PROCEDURAL SAFEGUARDS

2.1 PRIOR NOTICE

QUESTION #1

Q. What is a "reasonable time" for prior notice? (March 1988)

A. An exceptional child's placement may be changed by the school district after it gives the parents prior written notice "a reasonable time" before the change. OSEP states that ten calendar days is a "reasonable time." If a parent has already given initial consent for evaluation and placement, and subsequently it is determined that a change of placement is in a student's best interest, the school must give proper written notice to the parents and wait ten days. If during that time the parents do not request a hearing, even if they disagree, the change can be made.

QUESTION #2

Q. When must the LEA give parents a copy of procedural safeguards and due process rights and what content should the Prior Notice contain? (July 1999)

A. Prior written notice must be given to the parents of a student with a disability a reasonable time before the school system:

1. proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the student; and
2. refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the student.

The content of prior notice must include, in addition to all the procedural safeguards:

1. a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;
2. a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal;
3. a description of any other factors which are relevant to the agency's proposed action or refusal;
4. a statement that the parents of a student with a disability have protection under the procedural safeguards of this section, and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
5. sources for parents to contact to obtain assistance in understanding the provisions of prior notice.

QUESTION #3

Q. What relationship must exist between the Invitation to Conference and the IEP committee signatures? (April 1992)

A. The Invitation to Conference is part of the documentation procedure (Prior Notice) that ensures that parents' due process rights are observed. The regulations say that a parent is entitled to notice which includes the purpose, time, and location of the meeting and who will be in attendance. Correlation between names and signatures is an indication that parents were appropriately notified as required in the federal regulations.

QUESTION #4

Q. What is the LEA's responsibility with regard to prior notice and the number of days which must pass between notice and the convening of the IEP committee? (April 1992)

A. There are no mandated number of days by which parents must receive prior notice when an LEA is inviting parents to an IEP meeting. Federal regulations say parents must be given reasonable notice of the impending meeting, and the LEA must document good faith efforts to involve the parents. The Office of Special Education Programs suggests ten (10) days as a reasonable time.

QUESTION #5

Q. If an LEA is recommending a change in placement, how many days must it wait before implementing the change? (July 1994)

A. The Office of Special Education Programs and Office of Civil Rights suggest ten days as an appropriate time span between providing parents with prior notice of their parental rights and the proposed change in placement, and implementing a change in placement. A parent has sixty (60) days from the notice of change in placement to request a due process hearing. If the LEA has already implemented the change before the petition, the child must be moved back to the original placement where he/she will remain (stay put) until the contested action is resolved.

QUESTION #6

Q. What should an IEP team do when the parent keeps canceling scheduled IEP meetings? (July 1999)

A. Unfortunately, this sometimes happens. The school system has the ultimate responsibility for the development and implementation of an IEP for a student with a disability. If a parent cancels an IEP meeting more than twice, schedule a new one and send at least two invitations to conference -- the first as the initial notice and the second as a reminder -- and hold the meeting as scheduled. In the invitation to conference, offer to set up a conference call, but advise the parent that two meetings have been canceled and that the IEP must be developed. Also tell the parent that the team hopes he/she will attend, but the team will proceed without the parent's presence. Upon completion of the meeting, send the parent a copy of the IEP and minutes of the meeting.

QUESTION #1

Q. When must parents receive the procedural safeguards notice (Handbook on Parents' Rights)? (July 1999)

A. A copy of the procedural safeguards notice must be given to parents, at a minimum:

1. upon initial referral for evaluation;
2. upon each notification of an IEP meeting;
3. upon reevaluation of the student; and
4. upon receipt of a request for a due process hearing.

QUESTION #2

Q. When a child's parents are divorced with one having custody, who should have access to the confidential information about the child? (November 1986)

A. Both parents should have access to the confidential information about their child, even though one has custody, unless the agency has been advised of a court order prohibiting such. Without benefit of a court order, local education agencies may presume that either parent has authority to inspect records.

QUESTION #3

Q. Are two signatures needed on required permissions when there is dual custody or when the custody of the child has never been established? (November 1986)

A. The federal regulations state that parental permission must be granted prior to evaluation or placement of a child with disabilities. There is no requirement that both parents provide their signatures. Schools are not obligated to check out all situations to make sure that parents are not divorced or that there is a problem with one parent signing instead of another. If a problem does arise, however, school systems should try to work with both parties in deciding what is needed for the child.

QUESTION #4

Q. Should the school system allow parents to sign children out of exceptional children programs after they have at one time agreed to the placement? (April 1992)

A. The "granting of consent is voluntary on the part of the parent and may be revoked at any time." The vehicle for revoking consent, however, is through the due process procedures (administrative review). When a parent no longer feels a child should receive exceptional children services, the parent may immediately request an administrative review through the Office of Administrative Hearings. If the parent refuses due process and insists on removing the child, the local education agency is compelled to request an administrative review if it feels the child must have exceptional children services in order to receive an appropriate education. During the pendency of an administrative review, unless the local education agency and the parents of the child agree otherwise, the child involved must remain in his or her present educational placement (in this case, the special education program). If the hearing officer's review upholds the local education agency's placement, the local education agency may continue to provide special education without the parent's consent, subject to the parent's rights of a judicial appeal. If a parent revokes consent, that revocation is not retroactive, i.e. it does not negate an action that occurred after the consent was given and before the consent was revoked.

QUESTION #5

Q: Is it required that minutes be kept of committee meetings such as IEP meetings? (August 1994)

A: There is no federal or state regulation that specifically requires minutes be kept for such meetings. However, it certainly is best practice. School systems are frequently asked to provide information about what happened at a particular meeting, especially with relation to the various options that are considered and discussed when developing IEP's or deciding placement. In the event that a formal complaint or litigation occurs, written minutes provide a record of what happened at a meeting. While they need not be lengthy, they should be of sufficient content to assist committee members in reconstructing and/or reporting events regardless of when the meeting actually occurred.

QUESTION #1

Q. Do North Carolina procedures require that costs for independent educational evaluations be reasonable? How is reasonable cost determined? (January 1989)

A. According to OSEP and analysis of the regulations of IDEA, a public agency should not be asked to bear the cost of "unreasonably expensive" evaluations when such evaluations are available at less expense and at no cost to parents. It is permissible for a state to define reasonable cost. Reasonable cost may be determined on the basis of the rates the local education agency has paid for other evaluations. Local education agencies are required to inform parents about where such independent educational evaluations can be obtained, as stated in federal and state law.

QUESTION #2

Q. Must the parent obtain prior approval from the LEA in order to get reimbursed for an independent educational evaluation? (July 1999)

A. Nothing in state or federal law requires a parent to obtain prior approval from the school for an independent educational evaluation. However, whenever an independent evaluation is at public expense the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the local education agency uses when it initiates an evaluation. Failure to meet these criteria could result in parents not receiving reimbursement; in addition, the LEA could prove in a due process hearing that their evaluation is appropriate. In other words, contact with the school system before obtaining an IEE is desirable, but not required.

QUESTION #3

Q. Must a school system replace its psychological report with a privately obtained independent report at the request of the parent? (April 1992)

A. The parent has no right to make such a request under IDEA; however, under the Family Educational Rights and Privacy Act (FERPA), a request may be made to amend the records. FERPA indicates that if the education agency refuses to amend the student's record, it shall inform the parent of the refusal and advise the parent of the right to a hearing. The hearing is not a special education due process hearing and the parent does not have the rights afforded in a due process hearing. However, if the parents obtain an individual evaluation at the parents' expense, the results of the evaluation:

1. must be considered by the public agency in any decision made with respect to FAPE; and
2. may be presented as evidence at a hearing.

QUESTION #4

Q. Do psychologists who practice in other states meet the requirements to perform independent educational evaluations? (January 1989)

A. They meet those qualifications if they are licensed by either the North Carolina State Department of Public Instruction or the North Carolina Psychological Licensing Act. According to the Office of Special Education Programs, it is permissible and expected that states will have state criteria for the implementation of IDEA as long as there are no violations of this federal law. Since federal law does not address licensure of psychologists, North Carolina may set regulations in this regard. "Qualified" is defined to mean that a person has met state education agency approved licensure. A local education agency may therefore refuse to accept the evaluation of a psychologist not licensed/certified in North Carolina on the grounds that it does not meet "state" criteria.

QUESTION #5

Q. Does North Carolina have the right to restrict availability of independent educational evaluations to professionals within a limited geographical location? (January 1989)

A. Federal law states that whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, must be the same as the criteria which the public agency uses when it initiates an evaluation. It is permissible for a state to set reasonable limitations regarding the location of the independent educational evaluation as long as the limitations are the same for evaluations initiated by the local education agency. Requiring an evaluation to be conducted within the state or region is considered reasonable unless there is no one in the state who has the qualifications, in which case, within the state would be considered unreasonable.

QUESTION #1

Q. Can parents' or the local education agency's attorneys fees be paid with Part B funds? (April 1992)

A. Neither Part B nor state exceptional children categorical funds can be used to pay prevailing parents' attorney fees or the attorney's fees of the local education agency.

(See Procedures Governing Programs and Services for Children with Disabilities, 1999 Edition, Section .1512 P.)

QUESTION #1

Q. What situations require a child to have a surrogate parent? (March 1989)

A. Federal and state laws require a surrogate parent to be appointed for an exceptional child whenever the parents of the child are unknown, unavailable, or the child is a ward of the state. These laws define the term parent as follows: "a parent, a guardian, a person acting as a parent of the child, or a surrogate parent who has been appointed by applicable regulations. The term does not include the State if the child is a ward of the State." Any exceptional child who is not represented by one of the above in the education decision-making process must be assigned a surrogate parent. The regulations state that the term "guardian" refers to private individuals who have been given the legal custody of a child. In cases where a State or State agency has been assigned as the legal guardian of the child, a surrogate parent must be appointed. Where institutionalized or parentless children are assigned a legal guardian who is an employee of the State agency responsible for the care of the child, a surrogate must be appointed. The regulations also state that the term "person acting as a parent for the child" refers to relatives of the child or private individuals allowed to act as parents by the child's natural parents or guardians. It does not include any persons or agencies supported in whole or part by public funds to care for the child. If an exceptional child is not represented by such a person, a surrogate parent must be appointed. The LEA is responsible for selecting, training and appointing surrogates for students educated in an LEA. If the local education agency is either the Department of Human Resources or the Department of Correction, then the Secretary of those departments may assign the surrogate parent.

Any agency or institution educating exceptional children and receiving federal or state funding for support of educational programs is required to adhere to surrogate parent regulations. Examples of such funds include EHA Title VI-B, Title 1, Vocational Education and other federal and state funds. Even if a private child care institution receives no such funds but wishes the child to be educated by the local education agency, the local education agency must comply with surrogate parent regulations. The same applies if a local education agency contracts with a private agency to educate the child. Private institutions educating exceptional children and receiving no public funds are not required to comply with the regulations.

QUESTION #2

Q. Who can qualify as a surrogate parent? (July 1999)

A. A person selected as a surrogate parent cannot be an employee of the state agency, the LEA or any other agency that is involved in the education or care of the child. The person cannot have an interest that conflicts with the interest of the child he or she represents. A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child if that person has no conflict of interest.

QUESTION #3

Q. What would qualify as a "conflict of interest" that would prohibit a person from serving as a surrogate parent? (1982)

A. Examples of conflict of interest include the following:

1. An employee paid by an agency or institution responsible for the education or care of the child;
2. Local education agency school board member serving as a surrogate for a child residing within the local education agency;
3. Spouse of principal working with local education agency serving as surrogate for child residing within the local education agency; or
4. Owner of private school for students with disabilities serving as surrogate for student with disabilities who wants to be served at the private school.

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QUESTION #4

Q. Who qualifies as a "guardian" who can make educational decisions under IDEA? (July 1985)

A. Under IDEA and G.S. 115C-116, a "guardian" is a private individual who has legal custody of the child. If the state or local agency is the child's "guardian," then the child is a "ward of the state" and needs a surrogate parent.

QUESTION #5

Q. Can a social worker from the local Department of Social Services be appointed as a child's surrogate parent? (July 1985)

A. No. State Statute (G.S. 115C-116) and federal regulation (45 CFR 300.514 (d)) prohibit a social worker employed by the local Department of Social Services from serving as a child's surrogate parent if that child is in the custody of Social Services.

QUESTION #6

Q. When a child is in the custody or is the placement responsibility of the Department of Social Services, who determines if that child needs a surrogate parent? Who assigns the surrogate parent? (July 1999)

A. The determination of the need for a surrogate parent and a subsequent nomination should be made jointly by the Department of Social Services and the local education agency. If a custody order exists, the Department of Social Services should inform the local education agency regarding what rights the custody order grants the child's parent(s). However, the ultimate responsibility for naming a surrogate lies with the local education agency serving the child. The local education agency has the responsibility to see that a potential surrogate is screened, trained and has no conflicts of interest.

QUESTION #7

Q. Do directors of county departments of social services have authority to consent to educational services for exceptional children? (March 1986)

A. No person employed by social services, either as a director or social worker, can make any educational decisions for students with disabilities in their custody or care.

QUESTION #8

Q. Can employees of Department of Social Services serve as surrogate parents if they are not involved with the child? (October 1987)

A. No. The nonemployee requirement prohibits any "employee of a public agency which is involved in the education or care" of a child from serving as a surrogate parent. Because the phrase "which is involved in the education or care of the child" modifies the term "agency" and not "employee," the Office of Special Education interprets this exclusion to apply to all employees of that agency and not only to those employees working directly with a particular child. This exclusion prohibits these people from serving as surrogates under any circumstances. A surrogate parent must be free from institutional bias regarding the education of the child and from the possibility of administrative retaliation for the faithful execution of his/her rights and duties as a surrogate parent.

QUESTION #9

Q. Can a foster parent assume parental responsibilities if designated by Department of Social Services? (October 1987)

A. There is no rule either forbidding or requiring that foster parents act as surrogate parents; however, most legal opinions suggest that foster parents have too many potential conflicts of interest to serve as the child's surrogate parents for educational purposes. Foster parents may volunteer to be trained and serve as surrogate parents for their foster children provided they have no conflict of interest and are not agency employees involved in the education or care of the child. It is the position of the Office of Special Education Programs and the Exceptional Children Division that requests for foster parents to be appointed as surrogates be determined on a case-by-case basis. It is strongly recommended that local education agencies explore all other resources prior to this choice. The Exceptional Children Division will provide technical assistance to local school administrative units in assessing conflict of interest and nonemployee status.

QUESTION #10

Q. Can teaching parents at a private residential home assume parental responsibilities? (October 1987)

A. No, the teaching parents at a private residential home cannot be given educational decision-making responsibilities for the students in their care. Federal law does not contemplate a voluntary transfer of rights from natural parents of children with disabilities to other parents. The definition of parent or someone acting as a parent does not include persons hired by agencies which care for children. In other words, the consent and participation of the teaching parents cannot substitute for the consent and participation that is required by law from natural parents. The only legally effective substitute is the appointment of surrogate parents.

QUESTION #11

Q. Will a statement from the parent allow the guardian (e.g., grandparents, aunts, uncles, etc.) to give permission for evaluation, placement, etc? (October 1987)

A. Yes. Federal regulations define the term parent as: "a parent, a guardian, a person acting as a parent of the child, or a surrogate parent who has been appointed." The term "guardian" refers to a private individual who has been given legal custody of a child. The term "person acting as a parent of a child" refers to individuals allowed to act as parents of a child by the child's natural parents or guardian. It does not include any persons or agencies supported in whole or part by public funds to care for the child.

QUESTION #12

Q. Can grandparents sign consent forms for children with special needs when the local education agency has no record of the grandparents being appointed as legal guardians? Must the grandparents be appointed as surrogate parents? (May 1989)

A. According to IDEA, parent is defined in G.S. 300.20 as: "...a parent, guardian, person acting as a parent of a child, or a surrogate parent who has been appointed..." A parenthetical comment in this section states: "the term 'parent' is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives as well as persons who are legally responsible." A grandparent may act as a parent of a child in his care and does not have to be appointed as a surrogate as long as the grandparent has the explicit or tacit approval of the child's natural parent or legally appointed guardian. It is the responsibility of the local education agency to determine that such approval has been granted.

QUESTION #13

Q. Who assigns and/or monitors the surrogate parent for a child in the following situations: (March 1989)

A. The child is placed in a residential child caring agency outside his home local education agency (LEA) and is enrolled in the LEA where the child caring agency is located.

B. The child is placed in a residential child caring agency outside his home LEA and is enrolled in the private on-campus school operated by the child caring agency.

A. A. The local education agency where the child caring agency is located has the responsibility to secure a surrogate parent.

B. The child caring agency (if it receives public funds) is responsible for securing a surrogate parent.

QUESTION #14

Q. What is the operational definition of responsibility and/or authority relating to the responsibilities of surrogate parents, namely "to represent the child"? How are "education" issues versus "care" issues distinguished? (April 1992)

A. The phrase "represent the child in all matters relating to the identification, evaluation and educational placement" means that surrogate parents may exercise all of the same rights granted to natural parents by IDEA.

These rights include accessing educational records; participating in educational decisions; receiving written prior notice and responding with approval or disapproval before evaluation; receiving prior written notice and responding with approval or disapproval before placement; participating in IEP development, disciplinary proceedings and other school/parent conferences; initiating requests for evaluation and reevaluation; initiating and representing the child in complaint or due process procedures, etc.

What distinguishes an "education" issue from a "care" issue is not always easy to discern; however, as it pertains to the school setting, a surrogate parent would not have responsibility for such "care" or "treatment" issues as these examples:

1. whether or not a child receives fluoride treatment at school;
2. whether or not a child is vaccinated;
3. permission to take a child to a doctor/hospital when becoming ill or injured at school; or
4. permission for a child to go on a field trip.

These responsibilities would be assumed by the child's caretakers. The best way to determine the scope of a surrogate parent's authority is to review all of the educational rights granted to parents under IDEA and apply these same rights to surrogates.

QUESTION #15

Q. What liability do surrogate parents assume by agreeing to serve in this role and can they be held liable for decisions made in which they are involved? (April 1986)

A. It is the opinion of the Attorney General's Office that a person serving as a surrogate parent could only be held legally liable for his/her actions if that person was negligent or acted willfully in a wrongful manner while acting on behalf of the child. This same protection is afforded to social agency workers who are appointed to serve as wards for children.

QUESTION #16

Q. **Does a court-appointed guardian ad litem of a child in the custody of the Department of Social Services have the authority to give consent for evaluation/placement without first being appointed as a surrogate parent? (April 1992)**

A. No. The guardian ad litem (GAL) must be approved as a surrogate parent first. The GAL must not be an employee of the state or have an interest that would conflict with the interest of the child.

QUESTION #1

Q. Please clarify the ownership and security of psychological reports. (March 1989)

A. According to an opinion issued by the Attorney General's office (February 20, 1980), "Psychological reports prepared by the school psychologist or a psychologist contracting with the LEA are part of the child's cumulative record." As part of the cumulative record, the psychological report is considered confidential and is afforded the same protection as all other information contained in the records as specified by the Privacy Rights of Parents and Students Act, Part II (Buckley Amendment), Subpart A, 99.3. If the school system and/or the psychologist maintain separate copies of the psychological report, those copies are subject to the same standards of confidentiality as the cumulative record. In addition, the psychologist must adhere to the standards of confidentiality of student information contained in the NASP and APA Codes of Ethics and Standards of Professional Practice (NASP, 1984; APA 1981).

QUESTION #2

Q. Does listing disabilities on transcripts or cumulative folders violate the right of privacy of information in regards to exceptional children? (July 1985)

A. No. The cumulative folder and transcript are confidential documents and should be treated the same as information in special education records. There are no degrees of confidentiality. The Family Educational Rights and Privacy Act makes clear its purpose in asserting and protecting the confidentiality of the education records and personally identifiable information of all students attending educational agencies. Under this act, all education records such as cumulative folders and transcripts are to be kept equally confidential. Every effort must be made to prevent the disclosure of such information to inappropriate persons.

Since a transcript is one of the most likely student documents to be disclosed, it would probably be the most difficult to assure confidentiality. The local education agency would have to treat the transcript in the way it does placement records.

QUESTION #3

Q. Can evaluations done by third party individuals or agencies that are used for placement purposes be considered a part of the student's folder and transferred to a receiving local educational agency without parental permission? (January 1992)

A. Yes. When a parent consents to an outside agency (such as the Developmental Evaluation Center or Mental Health) releasing evaluation information to a child's school for educational purposes, that information becomes a part of the child's education record. Since the information has become a part of the child's record and was used in determining the child's educational needs, it should be sent to the requesting school. Any records dealing primarily with medical treatment or correction as opposed to education should not be transferred by either party. Only medical records used for placement are transferable. Section 99.31 (a) (2) of FERPA allows one school system to disclose educational records to another system in which the student intends to enroll if:

1. the sending system makes a reasonable attempt to notify the parent or eligible student at the last known address of either of the above; or
2. the FERPA policy of the sending system contains a notice that the LEA forwards records to other systems or institutions that have requested them and in which the student intends to enroll.

Third party evaluations may not be released to another outside agency without the express consent of the parents.

QUESTION #4

Q. When a child with a disability is being withdrawn from school and given home instruction, is a local education agency required to give original copies from a student's regular and special education records to a parent upon request? (June 1987)

A. No. The General Statute 115C-402 of Public School Laws mandates that the official record of each student enrolled in North Carolina's public schools be permanently maintained in the files of the school or central office from which the student graduates or should have graduated. Thus, the parent is not entitled to the permanent record. He/she may have copies of any or all information in the record. The special education records should be a part of the permanent record and follow the same rules. The school records must be maintained as long as the child is in need of special education. The fact that the child is being removed from the school by his parent for home instruction does not eliminate the child's need for special education. The records therefore must be maintained. The parent's request that the special education records be destroyed must be honored when the child is no longer in need of special education.

QUESTION #5

Q. Do personnel in a detention home have the right to access the records of exceptional children without parental consent? (January 1988)

A. Personnel in detention homes do not have access to such records unless they are operating an educational program approved by the state or under the auspices of a state agency. The parents of exceptional children in detention homes may give written release to personnel in the homes to access their children's educational records. This is the only way they have access. The personnel in the homes may not assume parental rights regarding educational decision-making simply because the children reside with them. If the children in the homes are wards of the state and their parents are unavailable, surrogate parents will need to be appointed. Further, personnel in the detention homes may not serve as surrogates if they are paid through a state or local governmental, educational or human resources agency.

QUESTION #6

Q. Must parents be shown test protocols? (August 1994)

A. Test protocols are not covered by the "sole possession" exclusion of the Family Educational Rights and Privacy Act (FERPA) regulations. OSEP has ruled that they are considered to be education records and must be made available for parental review. The exclusion clause of the FERPA definition of education records provides that "records of instructional, supervisory, and administrative personnel...which are in the sole possession of the maker and not accessible or revealed to any other individual except a substitute" are not subject to parental review.

Test protocols are subject to parental review - OSEP was asked whether the "sole possession" provision in the FERPA regulation could be interpreted as excluding test protocols from parent review. Apparently referring to prior FERPA office rulings on the nature of test protocols, OSEP responded in the negative. The FERPA office reasoned that even though the protocol itself may remain in the sole possession of the maker of the record, the information contained in the protocol is most likely discussed with school personnel when determining education programming and placement of students. Thus, once the information contained in the protocol is revealed to other persons, it loses its protected status and becomes an education record subject to inspection by the parent.

Right to receive copies of protocols - Although the test protocols must be made accessible to the parents, that does not mean that the public agency must provide copies of the protocols to parents, OSEP continued. Reg. 300.562(A) provides that the "Agency shall comply with a request without unnecessary delay..., and in no case more than 45 days after the request has been made." The right to receive copies of records is limited by Reg. 300.562(B)(2), which OSEP stated, applies mainly to when the parents are unable to come to the school during that 45-day

period to review and inspect their child's records. Under those circumstances, OSEP indicated, parents would have the right to request copies of records containing information about their child since failure to provide copies would, in effect, prevent the parent from exercising their inspection rights.

Copyright Infringement - Publishers and users of test protocols often object to the release of copies of the test questions and answers to the public because of the fear that such disclosure would make the norms meaningless in future testing. For example, the WISC-III and Peabody Picture Vocabulary Test-Revised contain language which does not allow the reproduction and release of such tests. In a letter sent to the FERPA office, it was asked whether such language could be used as a basis for refusing to release copies of the test protocols to parents. Both OSEP and the FERPA office stated that they could not comment on the effect of such language, or the application of the "Fair Use" doctrine, since that involved the interpretation of copyright law. The doctrine of fair use permits a person to make a limited number of copies of the copyrighted material for purposes such as criticism, comment, news reporting, teaching, scholarship, or research if certain standards are met. While it appears the copyright law and FERPA may be in conflict with each other, the potential conflict has not been litigated. Until such time as it is, LEA's are advised not to provide copies of protocols.

QUESTION #7

Q. What if parents of a student who is currently receiving special education services, request that the special education records not be transferred to another school in which the child intends to enroll? (April 1992)

A. Parent permission to release records to an agency in which a child intends to enroll is not required if the LEA has a statement in its confidentiality policy which says that the LEA will share educational records with another school in which a child enrolls. If the LEA does not have such a statement in its policy, it can notify the parents at the last known address of its intent to release the records and proceed with the release. A record must be kept of date of release, to whom, and reason. In addition, if the parent requests, the LEA can provide them with a copy of the records. Educational records include all records--special education as well as regular education. Parents do not have a selective veto on which records are released when a child transfers to another LEA.

2.7 DESTRUCTION OF RECORDS

QUESTION #1

Q. What exceptional children placement records must a local education agency maintain and for how long when a student transfers, drops out, moves away or otherwise leaves the school system? (March 1988)

A. No federal or state regulations require that a local education agency maintain a set of records for exceptional program purposes on exceptional students who transfer to another school. Local education agencies should transfer records of exceptional children to officials of another school or local education agency in which the child enrolls or intends to enroll. However, adequate documentation must be maintained to verify headcount be kept in the LEA from which the student transferred.

Neither federal nor state laws regulate the number of years that the records must be maintained for students who complete their educational programs or drop out. The Exceptional Children Division recommends that five years from the time the child leaves school would be an adequate length of time to maintain records if the agency does not wish to maintain the record permanently. The parent or child, if of age, should be notified prior to the destruction of the records so that he/she can obtain a copy for his/her files if so desired, unless a destruction of records policy is in place describing the method of notification.

Regardless of the reason for leaving school, directory information (a permanent record of a student's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed) should be maintained by the LEA without time limitation.

QUESTION #2

Q. Can either parent, in case of a divorce, request to have a child's records concerning evaluation for placement in special education destroyed? (October 1986)

A. Federal regulations state that information must be destroyed at the request of the parent if the child is no longer in need of special education. An agency may presume that either parent has such authority, unless the agency has been advised of a court order prohibiting such.

QUESTION #3

Q. What are the procedures for destroying records of students with disabilities who are no longer in school? (July 1999)

A. The local education agency shall inform the parent when personally identifiable information collected or maintained is no longer needed to provide educational services to the child. The personally identifiable information on a child with disabilities may be retained permanently unless the parent requests that it be destroyed. The educational agency should remind them that the records may be needed by the child or the parent for social security benefits or other purposes. The information shall be destroyed at the request of the parent. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed should be maintained without time limitation. LEAs should have a destruction of records policy.

QUESTION #4

Q. What should the response of the school be when a parent requests that a student's special education record be destroyed? (August 1994)

A. If the records are no longer required to provide special education and related services, the records must be destroyed. (Regulation 300.573)

3.0 DISCIPLINE

3.1 SUSPENSIONS

QUESTION #1

Q. What are the procedures that a school must follow when a student with a disability is subjected to a disciplinary removal for ten cumulative school days or less in a given school year? (July 1999)

A. When a suspension is for ten cumulative school days or less in a given school year, the school may follow its normal disciplinary procedures. The student is entitled to the same board of education due process safeguards that have been established for a student who does not have a disability when he/she is suspended from school. While there are no specific actions that must occur during this suspension period, if school personnel anticipate a likely potential for further disciplinary action on behalf of the child being suspended, this period of removal can be used for further planning. During this period, the IEP committee can be reconvened to determine if the student's IEP has been properly developed and implemented or if the program placement is appropriate to meet the student's needs. If the IEP committee identifies deficiencies in the IEP development or implementation and/or the student's placement, they should consider taking steps to remedy those deficiencies. The IEP committee may also want to complete a functional behavioral assessment if one has not been done previously. If a long term suspension is being considered, this period of removal allows the school an opportunity to provide notice and convene an IEP team, of which the parent is a member, and other appropriate personnel to determine if there is a relationship between the behavior that subjects the child to the disciplinary removal and his/her disability.

QUESTION #2

Q. What happens when a student with a disability is being considered for a disciplinary removal of more than ten cumulative school days during a given school year? (July 1999)

A. When a student with a disability is subject to a disciplinary removal for more than ten cumulative school days in a given school year, the local education agency must provide services during days of removal that exceed ten in the given school year to the extent necessary to enable the child to progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to meet this standard unless the removal constitutes a change in placement. If the school had not previously conducted a functional behavioral assessment and implemented a behavioral intervention plan before the behavior that subjects the child to consideration of disciplinary removal, the LEA shall convene an IEP meeting to develop an assessment plan. This meeting must take place within ten business days of the first disciplinary removal for more than ten cumulative school days in the given school year if the child does not have a behavioral intervention plan. As soon as practical after conducting the functional behavioral assessment, the IEP team shall develop appropriate behavioral interventions to be implemented that address the behavior that subjects the child to the disciplinary removals. If the child already has a behavioral intervention plan, the IEP team shall review the plan and its implementation and determine if modifications are necessary to address the behavior subject to disciplinary removal. If one or more of the team members believes that such modifications are necessary, the IEP team should meet and make such changes in the behavioral intervention plan.

QUESTION #3

Q. What happens when a student with a disability is being considered for a disciplinary removal for more than ten consecutive school days or for a series of removals that constitute a change in placement? (July 1999)

A. A change in placement for disciplinary removals occurs if the removal is for more than ten consecutive school days; or the child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. If a disciplinary removal constitutes a change in placement certain additional procedural safeguards and due process requirements must be followed. The first step to follow if the disciplinary removal constitutes a change in placement is to immediately notify the parent(s) of the decision to change the placement as well as all procedural safeguards to which they are entitled. An IEP team and other qualified personnel must convene within ten (10) school days to determine if the behavior is a manifestation of the child's disability. If the LEA did not conduct a functional behavioral assessment previously and the student did not have a behavioral intervention plan, the team must develop an assessment plan to address the behavior. If the child has a behavioral intervention plan, the team must review the plan and modify it as necessary to address the behavior. If the IEP team determines that there are deficiencies in the IEP or placement or their implementation, it should take steps at this time to remedy these deficiencies. If, following specified considerations, the team determines that the behavior is not a manifestation of the child's disability, school personnel may follow its normal disciplinary procedures subject to the parents' rights to seek a due process hearing, although the student must be provided a free and appropriate education during the period of disciplinary removal. The IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP during this period of disciplinary removal. If the team determines that the behavior is a manifestation of the child's disability, the child may not be removed. The team may propose a change in placement, if appropriate, for the student. The parent may request an expedited hearing if the parent disagrees with a determination that the behavior was not a manifestation of the child's disability or with the placement of the child resulting from such determination.

QUESTION #4

Q. What happens when a student with a disability carries a weapon to school or a school function or knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance while at school or a school function? (July 1999)

A. When a child with a disability carries a weapon or knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance, the student may be placed in an interim alternative educational setting for forty-five (45) calendar days. The parent(s) must be notified immediately of the decision and all available procedural safeguards to which they are entitled. The alternative educational setting must be determined by an IEP team which includes the parent. The setting must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications that will enable the child to meet the goals set out in the IEP. The setting must also include services and modifications that are designed to prevent the behavior that subjects the child to disciplinary removal from recurring. The multidisciplinary team must convene within ten (10) school days to determine if the behavior is a manifestation of the child's disability. If the LEA did not conduct a functional behavioral assessment and the student does not have a behavioral intervention plan, the team must develop an assessment plan and as soon as practical after conducting such an assessment, develop appropriate behavioral interventions to be implemented that address the behavior that subjects the child to the disciplinary removal. If the team determines the behavior is not a manifestation of the child's disability, school personnel may proceed with normal disciplinary procedures, although the student must be provided a free and appropriate education during the time of removal. If the team determines

the behavior is a manifestation of the child's disability, the child is not subject to the normal disciplinary removal. The team may propose to change the child's placement if they believe that a return to the placement before the removal is inappropriate, through the IEP and placement process.

QUESTION #5

Q. When a disciplinary removal exceeds ten consecutive school days or creates a pattern of exclusion that constitutes a change in placement, what factors should the IEP team consider when it conducts a manifestation determination? (July 1999)

A. The IEP committee which includes parents and other qualified personnel conducts a review to determine if there is a relationship, i.e., manifestation, nexus between the behavior and the disability. A number of factors should be considered in reaching such a decision:

1. The appropriateness of the student's IEP and placement;
2. The extent to which the student's IEP has been implemented and included the provision of special education and related services, strategies and interventions, positive behavioral supports and behavioral management techniques;
3. The extent to which the student's disability prevented the student from understanding the impact and consequences of the behavior;
4. The extent to which the student exhibited similar behavior in the past;
5. Evaluation and diagnostic results, including any results supplied by the parents of the student;
6. Observation by a person knowledgeable about the student and the student's disability, including to the extent possible, an observation in the environment in which the behavior occurred;
7. The context in which the behavior at issue arose, including antecedent behaviors and circumstances;
8. The extent to which the student's disability impaired the student's ability to control the behavior at issue;
9. Whether the student was told of the school policy regarding the behavior in question.

QUESTION #6

Q. What steps are available to parents if they disagree with the manifestation determination? (July 1999)

A. Parents may request an expedited due process hearing from the Office of Administrative Hearings. In reviewing the IEP team's decision, the hearing officer must decide whether the school demonstrated that the behavior was not a manifestation of the disability. See question 5 for those factors which the hearing officer must consider in reaching a decision.

QUESTION #7

Q. What is a functional behavioral assessment? (July 1999)

A. A functional behavioral assessment is a method of identifying and evaluating factors that reliably predict and maintain problem behavior. Such an assessment may include conducting interviews with parents, teachers, and/or others most closely associated with the student; a precise, descriptive observation(s) of the student; and/or a functional analysis. A functional analysis involves systematically changing specific factors, such as a schedule of reinforcement, individual consequences or reinforcements, and the sequence or time of day instructional activities are presented, to see if they affect the problem behavior. When conducting an assessment, consideration should be given to factors such as the purpose of the behavior, consequences of the behavior, events/occurrences (antecedents) prior to the behavior, and the setting and events in which the behavior occurred. Since the focus of interventions includes manipulating environmental events and building new, appropriate skills, a functional

behavioral assessment should assist with understanding what maintains the problem behavior, predicting when problem behavior may occur, identifying ways to prevent the problem behavior, and designing ways to respond to the problem behavior when it does occur.

QUESTION #8

Q. What is the stay-put provision and at what point does it become a factor in a disciplinary action? (July 1999)

A. Stay-put is implemented when parents file a due process petition because they are in disagreement with the school system over a proposed change in the identification, evaluation, or placement of the student, or the provision of a free and appropriate education. Due process petitions filed relative to discipline cases are generally over disagreements about proposed change in placement or the manifestation determination. Once the petition is filed, the student's placement cannot be changed during the pendency of the requisite administrative and subsequent judicial proceedings, unless the school officials and the parents can mutually agree to such a change in placement. Therefore, the placement of the child at the time of the contested action is often referred to as the "stay-put placement". Under the IDEA '97 regulations, if the behavior involves a weapon or a controlled substance violation or if a hearing officer has made a determination of the child's dangerousness, the unilateral assignment of the child to an interim alternative educational setting in these specific cases is the exception to the generally applicable pendency requirement of the stay put provision. Therefore, if disagreements arise over the proposed changes in placement or the manifestation determination in such situations and a due process petition is filed on behalf of a child involved, the stay put placement of the child becomes the interim alternative educational setting. However, if no resolution can be reached within the required forty-five (45) calendar day timeline for the assignment to the interim alternative educational setting, the child returns to the placement that he/she was in at the time of the behavioral incident, unless the school personnel maintain that it is dangerous for the child to return to the previous placement. In such case, the school would be required to file for an expedited hearing and meet the standards for dangerousness delineated in question 9.

QUESTION #9

Q. What actions are available to the principal if he/she believes a student is dangerous to himself or others and must be removed from the school for more than ten consecutive school days, but an IEP team has determined there is a relationship between the behavior and the disability and a change of placement cannot be agreed upon? (July 1999)

A. Upon the request of the principal, a hearing officer or a judge may order a unilateral assignment of a child to an alternative educational setting for forty-five (45) calendar days if the hearing officer:

1. Determines that the school system has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or others;
2. Considers the appropriateness of the student's current placement;
3. Considers whether the school has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplemental aids and services;
4. Determines that the interim alternative educational setting is one that:
   (a) allows the student to participate in the general curriculum, although in another setting, and to continue to receive those services in the student's current IEP, and will enable the student to meet the goals set out in that IEP; and
   (b) includes services and modifications designed to address the behavior which caused the disciplinary action to occur.

QUESTION #10

Q. **Under what circumstance may a principal notify the local law enforcement authorities if the student in question is a child with a disability? (July 1999)**

A. Nothing in state or federal regulations prohibits a school official from notifying law enforcement authorities if the student with a disability commits a crime. **Whatever action the school official takes must be the same action that he/she would take if the student did not have a disability.** An agency reporting a crime committed by a student with a disability must provide copies of the special education and disciplinary records of the student to the law enforcement authorities following the guidelines set forth by the Family Educational Rights and Privacy Act.

QUESTION #11

Q. **What is a free and appropriate public education (FAPE) for a student with a disability who has been long-term suspended/expelled? (July 1999)**

A. A FAPE for a student who has been long-term suspended or expelled provides services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The student's IEP team determines the extent to which services are necessary. The final regulations use the terms "progress in the general curriculum" which clarifies that the schools do not have to replicate every aspect of the services that the child would receive if in his/her normal classroom placement. As used in this context, the general curriculum as defined by the Exceptional Children Division is the North Carolina Standard Course of Study.

QUESTION #12

Q. **What is prior written notice? (July 1999)**

A. Prior written notice is written notice to the parents of a student with a disability anytime the school proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a free and appropriate public education. The notice must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. The date of the written notice is the date that triggers the statute of limitations in filing a due process petition. According to Chapter 150B of the Administrative Procedures Act, parents have sixty (60) calendar days from the receipt of the prior written notice to file a due process petition. Generally ten calendar days is considered an adequate time frame between the decision to take the proposed action and the action itself.

QUESTION #13

Q. **What should a school system do if a student who is to receive special education in an alternative educational setting such as homebound or alternative school doesn't come to school or is not at home when the teacher arrives? (July 1999)**

A. The Division recommends that the LEA address the problem in the same manner that it addresses any attendance problem. Once the number of absences for which reasons cannot be determined reaches 10 school days, the student may be treated as a drop out. For a student who is covered by compulsory attendance laws, the same legal requirements must be followed as with any student who is in violation of compulsory attendance law.

QUESTION #14

Q. Are there any procedural safeguards in place for a student who is not eligible for special education and related services? (July 1999)

A. The student who has not been identified as a student with a disability may invoke the procedural safeguards that are available to an identified student with a disability if the school had knowledge that the child was a child with a disability before the behavior that resulted in the disciplinary action occurred. A school shall be assumed to have knowledge that the student was suspected of having a disability if:

1. The parent had expressed a concern in writing to the appropriate school official that the student is in need of special education and related services;
2. The behavior or the performance of the student demonstrates a need for services;
3. The parent of the child has requested an evaluation; or
4. The teacher of the student and/or other personnel of the school system have expressed concern about the behavior or performance of the child to the director of special education or other agency personnel consistent with established child find procedures.

The local education agency would not be deemed to have knowledge that the child was suspected of having a disability if the school conducted an evaluation and determined that the child was not a child with a disability and did not require special education or upon request made a determination that an evaluation was not necessary and provided proper notice to the parents. If there is a request for an evaluation during the period of suspension, it must be carried out in an expedited manner. During the evaluation, the student will remain in an educational setting determined by the school officials. If the student is found to be a student with a disability as a result of the evaluation and requires special education, those services shall be provided in a setting deemed appropriate by the IEP committee.

QUESTION #15

Q. Can the homebound setting be used as an interim alternative setting in a discipline case? (July 1999)

A. Homebound is the most restrictive setting on the continuum of services. The IDEA '97 regulations do not address this question specifically. Therefore there appears to be nothing in the regulations that specifically prohibits the use of homebound as an interim alternative educational setting. It is important to note, however that if such setting is considered it must enable the child to continue to progress in the general curriculum and continue to receive those services and modifications, including those described in the child's current IEP that will enable the child to meet the goals set out in the IEP. The setting must also include services and modifications designed to prevent the behavior that caused the disciplinary removal from recurring.

QUESTION #16

Q. If a child with a disability is assigned to an in-school suspension program, do the days of such assignment count as suspension days ? (July 1999)

A. An in-school suspension would not be considered a suspension day as long as the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified in his/her IEP and continue to participate with nondisabled children to the extent they would have in their current placement.

QUESTION #17

Q. Would suspension from the school bus be considered a suspension day? (July 1999)

A. It would depend upon whether the bus transportation is considered a related service and included in the child's IEP. Therefore, if it is included, such transportation is determined necessary to obtain access to the services in order for the child to receive a FAPE. In such

cases, the suspension from the bus is treated as a suspension day. If the bus transportation is not part of the child's IEP, a bus suspension is not treated as a suspension day and the parents of the child have the obligation to provide transportation. However, schools should attend to whether the behavior on the bus needs to be addressed in a behavioral intervention plan for the child.

QUESTION #18

Q. **Who determines if a change of placement has occurred when the number of days of suspension exceeds ten cumulative school days? (July 1999)**

A. Neither the law nor the regulations speak directly to who makes the decision that a change of placement has occurred when the days of cumulative suspension exceed ten school days. However, when the interruption to the delivery of special education and access to the general curriculum reaches the level that a student's program is being compromised, a review of the suspension record must be completed. Since the IEP determines placement, the logical group to consider the question is the IEP team. A parent, administrator, teacher, or advocate should request an IEP team meeting to decide if a pattern of exclusion has been established that would constitute a change in placement.

QUESTION #1

Q. What should school personnel be aware of as they consider the use of physical restraint with aggressive youngsters? (July 1999)

A. According to public school law (G.S. 115C-390), school personnel may use "reasonable force" to maintain discipline. The exact phrasing is, "Principals, teachers, substitute teachers, voluntary teachers, teacher aides and assistants and student teachers in the public schools of this state may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order." Under G.S. 115C-391 regarding corporal punishment, suspension or expulsion of pupils, the following situations are described: "...Notwithstanding any policy adopted pursuant to this section, school personnel may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene in those situations when necessary:

1. To quell a disturbance threatening injury to others;
2. To obtain possession of weapons or other dangerous objects on the person, or within control, of a student;
3. For self-defense; or
4. For the protection of persons or property."

Physical restraint of students is a severe measure and its use is recommended only to prevent a student from harming himself or others, or in accordance with the situations defined in law as stated above. The duration of the restraint should occur only as long as is necessary for the student to regain control over his/her behavior. Even in unanticipated situations, the restraint should be used only by staff members trained in the proper, safe, and effective use of physical restraint. It is recommended that the extent of each staff member's training be documented in some manner. The expected use of physical restraint should be included in the student's IEP, and the procedures and rationale for use should be clearly reviewed with the student and parents/ guardian prior to implementation.

Whenever physical restraint is employed, the following documentation should be made:

1. What were the antecedent circumstances leading up to the incident?
2. What behavior warranted physical restraint?
3. When (time of day) did the restraint occur and how long (duration) did it last?
4. Who employed the restraint and what was the behavior of the student during the restraint?
5. What was the behavior of the student after the restraint?
6. After the restraint was completed, what was the resolution of the entire event?

A key word in these situations is the term reasonable. The following guidelines may be used to interpret this term:

1. Was the rule being enforced (e.g., antecedents), a reasonable one? Was it being enforced reasonably by the adult?
2. Was the form and extent of the teacher's response reasonable in terms of the type of offense?
3. Was the form and extent of the teacher's response reasonable in terms of the student's mental and physical condition?
4. Did the teacher exercise reasonable force without malice or personal ill will toward the student?

QUESTION #2

Q. What is an appropriate seclusion or isolation time-out area? (July 1999)

A. The time-out space should be designed to ensure the safety, health, and well-being of the student. The following are recommended.

1. The time-out space should be located in proximity to the teaching space where the student is normally located so that direct observation by an adult is possible.
2. Doors to enclosed time-out space should swing outward into the major adjoining space.
3. Hardware that can trap a student should not be used.
4. Hardware that can be operated by a supervising adult to secure a door to a time-out space should fall free by gravity upon release by the supervising adult.
5. Pressure on a door should not cause the hardware to bind, making the door inoperable.
6. Time-out spaces should meet all state and local health and life safety codes.
7. Visual and auditory monitoring are required. Glass in any windows should be impact resistant and shatterproof and should comply with ANSIZ97.1.
8. An enclose time-out space should be a minimum of 6' by 6'.
9. Floors, wall coverings and contents of the room should have Class A interior finishes and should not produce toxic fumes if burned.
10. Walls should be completely free of objects. A lighting fixture equipped with a minimum of a 75 watt bulb and screened to prevent tampering should be mounted in the ceiling.
11. Room temperatures and ventilation should be comparable to and compatible with the rest of the facility.
12. Heavily cushioned carpeting should be used on floors.

(Exceptional Children Facilities Planner, June 1998)

QUESTION #1

Q. Has the Exceptional Children Division taken any position regarding the use of aversives as behavioral tools for children with disabilities? (August 1994)

A. The Exceptional Children Division has not taken any official position with regard to the use of aversives. However, it is the opinion of the staff that there are very few, if any, occasions when aversives are appropriate. On those rare occasions when they might be considered appropriate, every effort must be made to assure that the parents/legal guardian are informed and understand the proposed aversive strategies and their potential side effects before giving consent. The IEP committee should review and document all less intrusive interventions proven unsuccessful in modifying the behavior targeted by the aversive behavioral intervention. The details for the implementation of the aversive behavioral intervention should be written and contained in the child's IEP with clearly established timelines and criteria for evaluating the effectiveness of the proposed strategy.

4.0 FINANCIAL RESPONSIBILITY

4.1 USE OF FUNDS (TEACHER LICENSURE, TEACHER ASSIGNMENTS)

QUESTION #1

Q. May state aid exceptional children funds be used to provide educational services for students with disabilities in a hospital or home program? (September 1987)

A. Yes. There are three ways to fund the services:

(1) A school system may use a teacher position during the school day.

(2) A school system may employ one of its teachers to provide home services after the instructional school day; this constitutes an extension of the employee's regular workday. The hourly rate of pay for the extended services must be based on the employee's present salary.

(3) A school system may contract with a teacher who is not one of its current employees. The contract amount (rate) between the school system and the contractor (non-school employee) is an agreement between the two parties. These rates are determined locally.

QUESTION #2

Q. May teacher assistants paid from exceptional children funds be assigned responsibilities other than special education? (December 1988)

A. Teacher assistants who are paid fully from exceptional children funds may be assigned only to provide supportive services within exceptional children programs.

QUESTION #3

Q. Can state exceptional children funds be used for extra pay for teachers for incentives or bonuses? (July 1999)

A. No. State exceptional children funds may not be used for this purpose.

QUESTION #4

Q. May an exceptional children resource teacher also work with children without disabilities in the regular classroom? (July 1999)

A. An exceptional children resource teacher or any other exceptional children's teacher cannot serve students without disabilities in a regular or special education classroom unless it is a bonafide team teaching situation. However, IDEA '97 clarified incidental benefits by saying that special education funds may be used to provide services and aids in a regular classroom or other education-related setting to a student with a disability even if one or more nondisabled children benefit from these services. Funds may also be used to develop and implement a fully integrated and coordinated services system.

QUESTION #1

Q. **Who has responsibility for the provision of services to students who are placed in private, public, state-operated, or state-supported programs when the agency or program where the child is placed determines that the child needs to be mainstreamed fully or partially into the local school system? (March 1987)**

A. The answer to this question depends on the type of program and whose decision it was to place the child.

When a local board of education makes the decision to place a child in another public or private school or facility, that school administrative unit (sending school/unit of legal residence) has the ultimate responsibility for the special education of the child. This unit of legal residence must enter into a contractual agreement with the public or private school or facility that will serve the child. The contract must specify the special education services to be provided and the duration of those services during the school year. All such contracts must be negotiated prior to or at the beginning of each school year.

It is the opinion of the Exceptional Children Division that once the specific services outlined in the contract are in need of revision because of the child's changing needs, the unit of legal residence should be notified by the serving agency that a revision is needed. The unit of legal residence meets with the serving agency and decides what revisions are necessary. If the decision is to place the child in the school system where the residential placement is located, then the unit of legal residence should contract with that LEA for the services. On the other hand, the unit of legal residence may also determine that the student is ready to return to its unit for services. The main point is that the responsibility for the provision of special education services and the decision as to what these services are lies with the school administrative unit of the child's legal residence.

When a child is placed by the unit of legal residence in another school administrative unit, the serving unit counts the child in average daily membership and the unit of legal residence counts the child in the December and April headcounts.

State operated/supported programs receiving Title VI-B and other state funds are responsible for the special education services provided to the children in their programs. When one of these programs feels that a child could benefit from special education services in a local education agency, the state-operated program should contact the school unit and discuss a contractual arrangement for payment of the services the school unit is to provide. Other arrangements, such as providing the school with an aide, could also be considered.

The Department of Health and Human Services is fiscally responsible for special education and related services for children whose special needs are provided by facilities operated by the Department. Duly placed means that students have been placed with the mutual agreement of the local education agency, the Department of Health and Human Services school and the parent/guardian or surrogate parent.

When children residing in facilities operated by the Department of Health and Human Services are mainstreamed into a local education agency, then a local agreement should be developed between the facility and the local education agency to establish fiscal responsibility.

QUESTION #2

Q. **If a medical problem that is classified as Other Health Impaired requires treatment and the parent unilaterally places the child outside the county, does the LEA have any responsibility in funding such a placement? (April 1987)**

A. When a student is placed in a facility for primarily medical reasons rather than educational reasons, the local education agency is not required to pay for the residential placement.

QUESTION #3

Q. **What obligation does an LEA have to provide special education and related services to a student who has been enrolled in a program for preschool children with disabilities, is presently eligible to enroll in public school kindergarten, but the parent decides not to enroll the child and requests special education be provided? (August 1994)**

A. The student is not entitled to any special education if the student is kept at home or is placed in a day care program that is not an educational program. If the LEA chooses of its own volition to provide special education, the student may be counted as a visiting student on the December and April 1 Headcounts for school-aged students. There are no provisions in federal law to count school-aged students on the pre-school headcount even if the child has never been enrolled in a K - 12 educational program. Compulsory attendance in North Carolina does not commence until the student's 7th birthday.

QUESTION #1

Q. Can a LEA access parents' insurance to provide special education and/or related services for a child with disabilities? (July 1999)

A. An LEA may access private insurance sources if the parents give permission after being informed that:

1. such access may limit the life-time benefits of the insurance policy; and
2. there is a clear understanding between the LEA and the parents over responsibility for payment of any deductible expenses.

The LEA must pay for any required deductible, as well as the reduction in life-time benefits that occurs because the LEA used the parents' insurance.

QUESTION #2

Q. Must an LEA provide special education evaluations for children enrolled by their parents in private schools? (August 1994)

A. Yes. Child Find regulation, 34 CFR 300.125, requires that children with disabilities must be identified, located, and evaluated, regardless of where they are enrolled in school or day care settings. If the parent merely requests an evaluation for information purposes only and has no intention of seeking special education, the LEA is not obligated to evaluate the child. This requirement applies only to children suspected of having a disability; it does not apply to parental requests for evaluations for gifted education.

QUESTION #1

Q. Can students who are reevaluated and determined ineligible for services remain in the program for the remainder of the grading period? (May 1989)

A. Students who are reevaluated prior to headcount day and no longer qualify but remain in exceptional children programs until the end of a grading period may not be counted on the headcount. This does not apply to seniors who may be included on the headcount.

QUESTION #2

Q. What is the proper accounting of hospitalized/homebound students with disabilities? (May 1990)

A. In accordance with State Board of Education policy, as set forth in Procedures Governing Programs and Services for Children with Disabilities, any student with a disability who qualifies for homebound or hospitalized instruction should be placed by the IEP team and should be coded 1H.

QUESTION #3

Q. When an exceptional child transfers to another LEA, must the sending local education agency retain the original and complete record of an exceptional child for audit purposes and send a copy to the receiving school? (February 1988)

A. While no federal or state regulations require that a local education agency maintain a set of records for exceptional program purposes on exceptional students who transfer to another school, adequate documentation to verify the headcount must be kept in the LEA. Adequate documentation would consist of that information which FERPA says may be kept as information when records are destroyed.

4.5 RESPONSIBILITIES AND LIABILITY

QUESTION #1

Q. Is the LEA obligated to pay for tutoring recommended by an independent evaluation even though the student is not eligible for special services? (August 1988)

A. No. If the appropriate committees have reviewed the required information on the student and determined that he/she is ineligible for an exceptional children's program, then neither the parents nor the student has any rights under special education law (IDEA). The school system cannot be asked to pay for tutoring.

QUESTION #2

Q. May a school withhold a student's record because the student is not in good standing? (January 1988)

A. A school cannot legally withhold a student's record from another school because of uncollected fees or because the student is not in good standing. This method of retribution places the hardship on the receiving school, not the student. Under the Buckley Amendment, the parent/guardian or eligible student has a right to review cumulative folder information. Special education folders are included and cannot be withheld. A school can deny participation in graduation exercises or a certified copy of a transcript.

QUESTION #3

Q. Who has the legal obligation to provide special foods that may be needed by children with severe disabilities? (July 1999)

A. Federal regulations governing the administration of child nutrition programs, 7 CFR Part 210.10 (g)(1), states the following:

> (1) Medical or dietary needs. Schools shall make substitutions in foods listed in this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority. July 19, 1996.

QUESTION #4

Q. If a therapist performing needed medical services at school is provided by some other party, what implications exist concerning liability for the school system? (July 1999)

A. The school system bears no responsibility for services it does not perform. Written documentation from the parents that they give permission for the medical person to administer the services at school should be secured. The school system's local school board policy governs whether private providers are allowed to conduct therapy on school grounds.

QUESTION #5

Q. **Can an LEA refuse homebound services to a student when a parent or legal guardian is not in the home? (January 1992)**

A. A school unit can require that an adult be present when the homebound teacher arrives to provide services. The system might agree for parents to designate another responsible adult, or the LEA might arrange to provide services at a site other than the home.

QUESTION #6

Q. **When a physician states that a certified respiratory therapist must be with a student at all times to perform necessary suctioning, is this an exceptional children responsibility? (July 1999)**

A. Only two types of services can be funded from special education money: special education and related services. The emergence of medically fragile students into educational programs will require further clarification and definition on a case by case basis as to when services are medical and when they are educationally relevant. Medical services beyond diagnosis or evaluation are excluded as related services and a local school administrative unit is not required to provide such services. Related services have been defined by regulations to include "health care services." Health care services are services which can be performed by persons with appropriate training other than physicians.

The recent Supreme Court decision, Cedar Rapids Community School District v. Garret F. By Charlene F., adopted a bright-line test to determine when a requested service is a related service which must be provided or an excluded medical service. The majority reasoned that services such as catheterization, tracheostomy, ventilator setting checks, ambu bag administrations as a back up to the ventilator, blood pressure monitoring, etc. are supportive services necessary for the student to attend school. Medical services in IDEA are limited to diagnostic and evaluation purposes. Since the services required by the student did not have to be provided by a physician and were not diagnostic or evaluative in nature, they were not medical and thus must be provided by the school system as a related health service.

If the student's IEP team determines that the student requires suctioning in order to be in school and if the procedure can be performed by someone other than a physician, the therapy must be provided by the school.

QUESTION #7

Q. **Is a school system required to pay for out-of-state educational services for students who were placed in a hospital for treatment by their parents? (April 1989)**

A. According to the Office of the Attorney General, when a placement is made for medical reasons without the assistance and cooperation of the local education agency, the local education agency is not responsible for providing the cost of education and related services. In addition, special education funds cannot be used to pay for educational costs in a hospital or any other program that is not approved by the State Board of Education. Local education agencies would be required to pay for an out-of-district or out-of-state placement only if (1) the LEA makes the placement; (2) the parent has shown cause through a due process hearing as to why the child cannot be placed in the district or state; or (3) the LEA agrees to the out-of-district placement. If the student is identified as disabled according to North Carolina criteria, the parents are entitled to due process rights and may exercise these rights if they feel that public school placement is inappropriate. Of course, the school system would have to be given an opportunity to evaluate the student. If the student is not identified according to North Carolina criteria, the parents may file a due process hearing if there is a disagreement between the parent and the agency on whether or not the child is an exceptional child.

QUESTION #8

Q. What is the LEA's responsibility to students confined to the hospital or home who are not identified as students with special needs, but who are placed by their parents in a short-term treatment facility for emotional problems? (October 1987)

A. Since the non-exceptional student is not covered by IDEA or G.S. 115C, article 9, there is no requirement that home/hospital services must be provided and the parents have no due process rights. In addition, the needs of these students should be addressed by regular education. Under Section 504 of the Rehabilitation Act of 1973, a free appropriate public education includes regular education as well as special education as defined in Section 504.

QUESTION #9

Q. What is the school system's responsibility for providing orientation and mobility services for students who are visually impaired? (July 1999)

A. It is the responsibility of the school system to provide orientation and mobility if a student's IEP states that such is needed. The system can provide the service or it may contract with an outside entity if no one on staff is qualified.

QUESTION #10

Q. If a student with disabilities wishes to take physical education as an elective beyond the one (1) unit required for graduation, does the local education agency have to offer an adapted course if P.E. electives are offered to the regular students? (April 1985)

A. Yes. Special education as set forth in federal regulations includes instruction in physical education, which is provided as a matter of course for all children without disabilities enrolled in school. The provision in federal regulations is to assure that whatever action is necessary is taken in order that physical education services are available to all children with disabilities. It is expected that physical education, specially designed where necessary, is to be provided as an integral part of the education program of every child with disabilities. As we interpret this, if physical education is offered as an elective to children without disabilities, then such services must also be available to students with disabilities. The determination as to whether the course provided is to be adapted should be specified in the child's individualized education program.

QUESTION #11

Q. What are the responsibilities/liabilities of school nurses and other school personnel who administer health services and provide some health care to students? (December 1988)

A. Federal and state laws require persons administering health services (such as clean intermittent catheterization, mucus suctioning) to be appropriately trained and to use correct procedures. The North Carolina Nurse Practice Act and the North Carolina Nurses' Licensing Board enact which procedure can be performed by which person, i.e., Registered Nurse, Licensed Practical Nurse, or Certified Nurse Assistant. State law (G.S. 115C-307) provides that if correct procedures are followed and persons are appropriately trained, no public school employee shall be liable in civil damages for any such act or for any omission relating to such act unless such act or omission amounts to gross negligence, wanton conduct or intentional wrongdoing.

The Attorney General's Office has ruled that if correct procedures are followed and personnel are appropriately trained, the state will defend local school administrative unit employees

sued for negligence in performing these services and will pay monetary judgements if they are found liable. This provision was provided for in Chapter 971 of the 1979 Session Laws.

There is no federal or state requirement that school nurses must work under the supervision of a physician. They should only administer drugs or medication prescribed by a doctor but are not bound to be supervised in the school setting by a physician. IDEA requires local boards of education to provide related services as are necessary for students with disabilities to benefit from their education. Related services include health care services.

QUESTION #13

Q. **What is the school system's responsibility to pay for private psychological counseling for an exceptional student when the parents obtained the counseling services? (May 1989)**

A. Under federal and state laws, the special education and related services needs of an exceptional child must be determined by a committee. Regulation 300.535 of IDEA states that the placement decision must be made by a group of persons, including persons knowledgeable about the child, the meaning of evaluation data, and the placement options. It further states that if it is determined by the team of persons that the child needs special education and related services, an individualized education program (IEP) team must develop an IEP for the child. The child's parents must be invited as participants in the IEP meeting. The IEP must specify the special education and related services that the child is to receive.

Parents may not arbitrarily determine the related services an exceptional child needs. When such a unilateral decision is made, the school system is not obligated to pay for the services. The school system would be obligated to pay for the services only if:

1. the IEP team recommends the services because they are necessary for the child to benefit from special education; or
2. the parents have shown cause through a due process hearing that the related services are required for the child to benefit from special education and that the school system cannot provide the services

A general rule of thumb is that what the LEA recommends through its various teams is what the LEA is fiscally responsible for.

QUESTION #14

Q. **Must an LEA provide speech-language services for a child who is otherwise being educated at home by his parents? (July 1994)**

A. Home instruction as a means of educating a child is legal, and a home school is considered the same as a private school as long as the parent has registered with the Department of Non-Public Instruction. The LEA shall give the same consideration to a request for special education from a home school that it affords any other private school. Note: Special education for students in private schools is a federal regulation and relates to VI-B services.

QUESTION #15

Q. **Who is financially responsible for the cost of damage to school or personal property resulting from a BED student's aggressive behavior? (August 1988)**

A. General Statute 115C-523 of Public School Laws applies to any child who destroys school property. This statute states that "the parents or legal guardians of any minor are liable for any gross negligence or willful damage or destruction of school property by that minor to the extent of five thousand dollars ($5,000). The Board of Education shall make written demand upon the parent or legal guardian as a prerequisite to bringing suit." No other federal or state laws are known which prohibit applying the above statute to children with disabilities.

QUESTION #16

Q. **In the event that a BED student runs away from school and the parents and police have been contacted, can the school be held liable if the child is hurt or hurts someone else during the period of time he/she is missing? (August 1988)**

A. No, unless negligence on the part of school personnel occurred.

QUESTION #17

Q. **If a BED student is suspended, taken home, or placed on homebound services and is left unsupervised, can the school be held liable if the student endangers himself or another while at home or in the community during school hours? (August 1988)**

A. No, if the school system has followed established procedures regarding suspensions for all students under public school laws and those procedures specific to the suspension of children with special needs and has adopted policy regarding suspension and expulsion.

5.0 GENERAL EDUCATION REQUIREMENTS

5.1 STATE TESTING PROGRAM

QUESTION #1

Q. Are teachers of the educable mentally Disabled (EMD) and learning disabled (LD) required to follow the Standard Course of Study and are these students subject to end-of-course testing? (July 1999)

A. Yes. If students with disabilities expect to receive a high school diploma they must follow the standard course of study and take the end-of-course tests. The curriculum may be modified according to the IEP to meet student needs, but the course content is expected to parallel that which is found in the Standard Course of Study and the course code (i.e., SIMS) will be the same. Because of the large number of modifications that are available for the State Testing Program, there should be few, if any, requests for exemption from testing.

QUESTION #2

Q. What children with disabilities are automatically exempt from the State Testing Program which includes end-of-grade and end-of-course tests? (July 1999)

A. No students with disabilities are automatically exempt from the State Testing Program. A decision to exempt or provide accommodations is made on a case-by-case basis by the IEP team. Decisions about exemption must be made at the time of annual review of the IEP; not when the testing schedule is about to begin.

QUESTION #3

Q. Which students are required to take End-of-Course tests? (August 1994)

A. All students, including students with disabilities, who are in membership in any Standard Course of Study for which an End-of-Course test has been developed are required to take the end-of-course test.

QUESTION #4

Q. Are modifications available for the North Carolina Testing Program? (August 1994)

A. Yes. Refer to the most recent edition of Testing Modifications for Students with Disabilities for the types of modifications that are available and the categories of disabilities for which they are recommended.

QUESTION #5

Q. What are chance scores? (August 1994)

A. Chance scores are scores students would receive by answering questions randomly. Chance scores are employed when a school system does not meet the 95 percent participation rule. A chance score's highest yield is 25 percent.

QUESTION #6

Q. What are the alternate assessments that are referred to in the test modification manual? (July 1999)

A. The North Carolina Alternate Assessment Portfolio is a part of the overall state assessment program designed to improve planning, instruction, and accountability for students with severe cognitive disabilities.

5.2 GRADUATION REQUIREMENTS

QUESTION #1

Q. **If an exceptional student graduates from high school with a graduation certificate, does not pass the competency test and is not twenty-one years old, may the student re-enroll and continue his/her education in the public school until the age of twenty-one? (July 1999)**

A. IDEA '97 emphasized that a student who receives an exit document other than a standard diploma is entitled to return to school to the age of 21, and with the agreement of the LEA, may attend school through the age of 21.

QUESTION #2

Q. **In order for a student with learning disabilities to be exempt from the Algebra I requirement, must he/she be identified as learning disabled in the specific area of mathematics (i.e. a 15 point discrepancy or an alternative discrepancy in the area of mathematics)? (July 1999)**

A. In order to be eligible for exemption from the Algebra I graduation requirement, a student must be identified as learning disabled in the area of mathematics with a 15 point discrepancy or an alternative discrepancy. This means that all evaluations for a specific learning disability must be in place, and an eligibility team report, including all dissenting opinions, must be available. This report must unequivocally rule out any other learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage as the primary reason for a student's substantial discrepancy between aptitude and achievement in the area of mathematics. The learning disability is manifested by substantial difficulties in the acquisition and use of mathematics skills (e.g. mathematics calculation or mathematics reasoning) which result in his/her inability to master algebra.

School systems are reminded that an exemption from algebra does not waive the requirement for three units of math in order to receive a standard high school diploma.

QUESTION #3

Q. **Does the IEP team have any authority in granting diploma credit for courses? (July 1999)**

A. Graduation requirements are established by the State Board of Education and become a part of the North Carolina Administrative Code following public hearings and final State Board approval and adoption. In order for a student with disabilities to be eligible for a standard high school diploma, he/she must be enrolled in required courses that teach the standard course of study and must take the end-of-course test for those courses in which an EOC is required. Failure to complete the State Board requirements will result in some other type of exit document, i.e., a graduation certificate which documents the student was enrolled in courses which met the general content area requirements but not the requirements of the standard course of study, a certificate of achievement which indicates that the student met all of the course and unit requirements for a diploma but did not pass the competency exam, or an attendance certificate which is a locally developed exit document. The IEP guarantees the right to a free appropriate public education, it does not guarantee a diploma.

6.0 PRESCHOOL CHILDREN WITH DISABILITIES

6.1.1 SCREENING/EVALUATION/IDENTIFICATION

QUESTION #1

Q. **What constitutes an educational evaluation for a preschool child suspected of having a speech-language problem? (April 1992)**

A. If a child has been screened and appears to have a speech-language disability, an educational evaluation is required. Based on severity, an educational evaluation could include interviews, observations, diagnostic tests, and other appropriate formal and informal measurements which will identify strengths and needs. The more severe the child's involvement, the more comprehensive the educational evaluation should be.

QUESTION #2

Q. **When does the 90-day timeline for placement decisions for a preschool child with a disability actually begin? (July 1999)**

A. Upon receipt of the referral, appropriate persons sign and date the form and the 90-day (calendar) timeline begins.

QUESTION #3

Q. **When is a preschool child with a disability considered a transfer student and when is he/she a candidate for initial placement? (July 1999)**

A. A preschool child with a disability is a transfer student if that child at age three or four was:

(1) determined eligible;
(2) given rights under 94-142; and
(3) served in special education by an LEA, state operated program, or other program.

All regulations that apply to the transfer of a disabled school-age child would then apply to a preschool disabled child. Services may continue according to the child's current IEP or IFSP until the IEP team reviews, revises, and amends the IEP/IFSP if necessary.

A 3-4 year old child in a private program or a program under Part C (Infant/Toddler Program) who has never received rights under P. L. 94-142, or one who has never been in a program must be treated as an initial placement. The IEP team shall place such a child according to preschool procedures.

Question #4

Q. **Can a kindergarten student be reclassified as LD, BED, or EMD when the child was evaluated and classified as preschool developmentally delayed/atypical in the late spring or early summer? (July 1999)**

A. Reevaluation is the focus in this case. The IEP team must review existing information, following the reevaluation process described in Procedures Governing Programs and Services for Children with Disabilities, and the team, including the parent, makes the decision as to which category of disability is appropriate based on the eligibility criteria. At the present time, kindergarten children labeled preschool delayed/atypical do not have to be reevaluated until prior to entry into the first grade.

QUESTION #5

Q. Who is responsible for having an early childhood transition meeting and must a representative of the public schools be present? (July 1999)

A. If a child is enrolled in the Infant-Toddler Program, then generally the child service coordinator or early interventionist is responsible for calling the transition meeting 90 days before the child's third birthday. If it is thought that the child will be eligible for Part B services, a representative of the school system should be present.

6.1.2 PLACEMENT PROCEDURES

QUESTION #1

Q. If a child who is enrolled in a Part C program turns three during the school year, may he/she continue in the Part C program for the remainder of the year? (July 1999)

A. Yes. The child may remain in the Part C program, subsidized through Part C funds or a combination of Part C and Part B funds, for the remainder of the school year or until the transition period to the Part B program has been completed.

6.1.3 IEP

QUESTION #1

Q: Can an IFSP be used in place of an IEP when the child transitions from the Part C program to the Part B program for preschool children with disabilities? (July 1999)

A. The IFSP may be used provided it meets the requirements of both the IFSP and the IEP. The school system must provide the parents with a detailed explanation of the differences between the two, and if the parents select the IFSP, the school system must contain written consent from the parents.

QUESTION #2

Q. Who may serve as the regular teacher at the IEP meeting for a preschool child with a disability? (July 1999)

A. If the child is enrolled in a regular early childhood program such as child care, head start, private preschool or Title I, and the teacher or director of that program is present, then that person may serve as the regular early childhood teacher. If the child is not enrolled in a regular early childhood program, then the birth-kindergarten teacher may serve as both the regular and the special education teacher. If the child is going to a transition kindergarten, then the kindergarten teacher may be the most appropriate person to serve as the regular education teacher.

QUESTION #3

Q. Must a regular education teacher be present at the IEP meeting for children who are being served at home? (July 1999)

A. Yes. Since the IEP has not been written, a decision has not been made that the child will be served at home. Therefore a regular teacher should be invited.

6.1.4 Placement Setting/LRE/Pupil-Teacher Ratios

QUESTION #1

Q. What options are available to help an LEA serve a preschool child with disabilities in the least restrictive environment? (July 1999)

A. If the IEP states that the appropriate placement of a preschool child with disabilities is with other children, then the school must work with the parents to provide a center-based option which could include such programs as one offered by the LEA, Head Start, Title I, or a private preschool program. If the program is one that is not operated by the public schools, the parent would enroll the child in the program and the LEA would either:

(1) take the special education service to the child;
(2) place a teacher and/or teacher assistant in the program; or
(3) contract with the program to provide services if it has a program approved by the Division.

Special education and related services would be the responsibility of the LEA, and parents would be responsible for other provisions such as day care. The courts have not required LEAs to implement programs for non-handicapped 3-4 year olds in order to provide disabled children education in the least restrictive environment.

QUESTION #2

Q. What does "general curriculum" mean for a preschool child with disabilities? (July 1999)

A. According to the definitions in federal regulations, the general curriculum for preschoool children means those activities in which typically developing children participate. In reviewing those activities with regard to children with disabilities, the IEP team must consider how the disability affects the child's participation in those activities. Appropriate activities refer to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved. These activities are discussed in the NC Guide for the Early Years.

QUESTION #3

Q. What is a regular early childhood program? (July 1999)

A. Regular early childhood programs for preschool in NC may include public school programs such as Title I, Even Start and fee for service programs. Non-public school programs may include child care (center or home), private preschool (church or other), Head Start or Smart Start classes.

6.1.5 Related Services

QUESTION #1

Q. Must the IEP for a preschool child with a disability contain an annual goal for a related service if the parents refuse the service offered by the LEA and purchase that service from another provider? (April 1992)

A. If a preschool child with a disability is in need of a related service to benefit from special education, the LEA should develop the IEP to reflect this need. The parents may, if they wish, choose to reject the LEA service and unilaterally access their own resources. Such a decision should be documented on the IEP.

QUESTION #2

Q. May a preschool child with a disability receive occupational therapy and/or physical therapy without receiving special education? (April 1992)

A. An LEA may not provide a related service unless a child is receiving special education.

6.1.6 REEVALUATION

QUESTION #1

Q. A child with a disability is eligible for kindergarten and enters school, but has not been enrolled previously in a preschool program for children with disabilities. However, the child has evaluations that were completed during his/her fourth year of age. Does the child have to be reevaluated before entering first grade? (July 1999)

A. No, the child with disabilities enters the program as a school-age child and is treated as an initial referral. Therefore, he/she will not require reevaluation until three years from the date of initial placement. The evaluations which were completed when the child was four may be used for initial placement if the data are current within one year and include the required components.

QUESTION #2

Q. If a four year old preschool child with disabilities is placed in a preschool program on the basis of evaluations completed during that year, must the child be reevaluated prior to entry into the first grade? (July 1999)

A. Yes. All preschool children with disabilities who are identified as delayed/atypical must be re-evaluated prior to entry into the first grade even if the evaluations are not three years old. This may be subject to change if the definition of developmentally delayed is adopted as a category in lieu of delayed/atypical and the age is extended.

6.1.10 FREE APPROPRIATE PUBLIC EDUCATION

QUESTION #1

Q. Is a child who is enrolled in a program for preschool children with disabilities automatically qualified for extended school year services? (July 1999)

A. No. In order for a preschool child with a disability to qualify for ESY, the child must meet the same criteria as a school-age student. This decision is made at the time of the annual review, or if that is not an appropriate time, the IEP team must set a date by which the team will reconvene to consider ESY.

6.2.2 PROCEDURAL SAFEGUARDS

Note: See procedural safeguards for school-age students. Procedural safeguards are the same for both groups.

6.4.1 USE OF FUNDS (TEACHER CERTIFICATION, TEACHER ASSIGNMENTS, FUNDING)

QUESTION #1

Q. When a preschool child with a disability is placed in a self-contained multi-age classroom, what type of licensure is the teacher of the self-contained class required to hold? (April 1992)

A. The teacher in the self-contained classroom is required to obtain birth-kindergarten licensure only if 50 percent or more of the class are preschool child with disabilities. It is recommended that a teacher in a self-contained classroom who does not have a background in the education of preschool children with disabilities receive training in the area or that a teacher who has preschool disabled or birth-kindergarten licensure provide consultation to the teacher in the self-contained classroom.

QUESTION #2

Q. Are preschool federal funds still allocated according to the December 1 headcount? (July 1999)

A. No. Preschool federal grant funds are now allocated according to a formula which includes a 75% block grant, with the remainder dispersed based on census and a poverty index.

6.4.5 RESPONSIBILITY AND LIABILITY

QUESTION #1

Q. When a preschool child with disabilities resides in one school district and goes to a private preschool or child care center located in another school district, what is the responsibility of the school district in which the child resides? (July 1999)

A. The LEA of residence has three options:

1. according to the needs indicated on the IEP, the LEA may offer appropriate services to the child within its own jurisdiction and the parent has the right to refuse these services;
2. the LEA may contract with the school district in which the child attends day care to provide appropriate services within that school district; or
3. by action of the local school boards, the educational responsibility for the child may be transferred from the LEA of residence to the LEA in which the child attends day care.

The LEA has an obligation to provide services in its own attendance areas. Numbers 2 and 3 are option.

QUESTION #2

Q. Who is responsible for providing transportation to preschool children with disabilities who attend preschool satellite or day programs operated by the Department of Human Resources? (July 1999)

A. Effective July 1, 1999, the program that includes the child on its headcount and operates the program the child attends is responsible for transportation. Therefore, the School for the Deaf or Governor Morehead School must provide transportation.

Exceptional Children Division
MIM
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